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ABSTRACT

The assertion of the right of higher education institutions to use racial preferences in their admissions policies has been based on the diversity rationale that U.S. Supreme Court Justice Lewis F. Powell articulated in his opinion in the "Bakke v. Regents of the University of California" case of 1978. This report explores the legal and constitutional issues surrounding the diversity rationale in U.S. higher education, and the position taken by higher education accreditation agencies on the question. It reviews survey research of faculty and student opinion on affirmative action in higher education and empirical research testing the hypothesis that campus racial diversity is coordinated with beneficial educational outcomes. The paper argues that Justice Powell's diversity rationale must be rejected based on evidence from each of these areas of investigation. Part 1 shows that a majority of the U.S. Supreme Court did not reach agreement about the constitutional justification for racial preferences, and that "Bakke" should not be cited as a court precedent supporting the diversity rationale. Part 2 shows that accreditation agencies have never embraced the "Bakke" arguments. Part 3 uses existing survey data to show that faculty and students reject preferential higher education admissions policies, and Part 4 shows that the claim that campus racial diversity is correlated with positive educational outcomes has already been tested and rejected. Part 5 reviews the body of research and indicates why future research is unlikely to support the diversity rationale. Part 5 also shows how the Powell rationale has become closely linked with versions of multicultural education and racial identity politics that are antithetical to the traditional, liberal concept of education and the traditional understanding of civil rights. (Contains 2 figures, 5 tables, 125 footnotes, and 78 references.) (SLD)

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RACE AND HIGHER EDUCATION

Why Justice Powell's Diversity Rationale for Racial Preferences in Higher Education Must Be Rejected

by

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ABSTRACT

Most selective universities in the United States, and the entire higher education establishment at One Dupont Circle in Washington, D.C., have asserted that universities must have, and do have, the right to use racial preferences in their admissions policies. The assertion of this right is based on the diversity rationale that U.S. Supreme Court Justice Lewis F. Powell articulated in his opinion in the Bakke case of 1978.

The present report covers the legal and constitutional issues surrounding the diversity rationale in American higher education; the position taken by the higher education accreditation agencies on the question; survey research of faculty and student opinion on affirmative action in higher education; and empirical research testing the hypothesis that campus racial diversity is correlated with beneficial educational outcomes. We argue herein that Justice Powell's diversity rationale must be rejected in each and every one of these areas of investigation.

In Part I, we show that a majority of the U.S. Supreme Court failed to reach agreement about the constitutional justification for racial preferences in university admissions in its Bakke opinion. Bakke, therefore, cannot be cited as a court precedent supporting the diversity rationale. This is, if anything, even more true today than it was in 1978 when Bakke was decided, because since 1978 the U.S. Supreme Court has rejected the justifications for racial preferences in university admissions that were accepted and advocated by four of the Justices who joined in Part V-C of Justice Powell's opinion in Bakke.

In Part II, we show that the diversity rationale has never been embraced by the agencies that are empowered by the U.S. Department of Education to accredit institutions of higher education in the U.S.

In Part III, we show from the existing survey data that faculty and students– the two principal constituencies of American higher education– unequivocally and overwhelmingly reject the preferential admissions policies that many American universities and the entire higher education establishment at One Dupont Circle have been defending in and out of court.

In Part IV, we show that the claim that campus racial diversity is correlated with positive educational outcomes has already been tested using a database that is perfectly adequate to the task, and that the research clearly shows that the Powell diversity rationale must be rejected when it is understood (as it typically is these days) as an empirical claim about the educational benefits of racial diversity. The discussion focuses on the very large and comprehensive database of the Cooperative Institutional Research Program, a joint project of the American Council on Education at One Dupont Circle in Washington, D.C. and the Higher Education Research Institute at UCLA. Part IV discusses in detail the studies of Alexander Astin, Mitchell J. Chang, and Patricia Y. Gurin, all of whom have used some form of the CIRP database in their analyses.

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Part V covers perspectives on the available data. In this part, we show that legal defenders of racial preferences have themselves acknowledged that they do not have the evidence that courts will require of them when university admissions policies come under judicial review. We also discuss the prospects for future research on the question, and show why future research is unlikely to change the present research picture. Since the CIRP database finds a large number of educationally significant correlations for socioeconomic status and gender (two variables with which discussions of campus racial diversity are often linked), defenders of the Powell rationale must show why the CIRP database finds educationally significant correlations for these two variables but not for campus racial diversity.

Part V concludes with the section "Does Race Matter?" Here we show why the Powell diversity rationale has become closely linked with versions of multiculturalism and racial identity politics that are quite antithetical to the traditional, liberal concept of education as well as of the traditional, classical understanding of civil rights. On these grounds, we conclude that the negative research findings for the Powell diversity rationale are very good news for America.

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PART I

LEGAL AND CONSTITUTIONAL ISSUES

THE CONSTITUTIONAL LANDSCAPE

Universities that use racial classifications to diversify their student bodies cite the Bakke case of 1978 as the legal precedent that provides the necessary legal justification for their policies. Despite claims to the contrary, however, there is no opinion by the U.S. Supreme Court that supports the so-called "diversity rationale" for racial classifications in university admissions, including Bakke. It is true that two sections of Justice Powell's separate opinion endorsed that rationale, but no other Justice of the Court joined those parts of his opinion. In Bakke, the Court reached a judgment (holding that the U.C. Davis Medical School's policies were unconstitutional, and ordering the school to admit Alan Bakke retroactively), but failed to reach a majority opinion about why the program was unconstitutional. As a result, Bakke does not stand for the proposition that racial preferences to promote racial diversity are permissible under the federal constitution, and cannot be cited as a legal precedent that justifies those policies.

In Bakke, the Court failed to reach a majority opinion about why the U.C. Medical School program was unconstitutional. As a result, Bakke does not stand for the proposition that racial preferences are permissible under the federal constitution, and cannot be cited as a legal precedent to justify those policies.

University of California Regents v. Bakke, 438 U.S. 265 (1978) describes the positions taken by the nine Justices in the case as follows:

> POWELL, J., announced the Court's judgment and filed an opinion expressing his views of the case, in Parts I, III-A, and V-C of which WHITE, J., joined; and in Parts I and V-C of which BRENNAN, MARSHALL, and BLACKMUN, JJ., joined. BRENNAN, WHITE, MARSHALL, and BLACKMUN, ... JJ., filed an opinion concurring in the judgment in part and dissenting in part ... WHITE, J., ... MARSHALL, J. ... and BLACKMUN, J. ... filed separate opinions. STEVENS, J., filed an opinion concurring in the judgment in part and dissenting in part, in which BURGER, C. J., and STEWART and REHNQUIST, JJ., joined .... .

As noted, Powell's opinion (his own opinion, not the Court's) was the only opinion in Bakke that even discussed the "diversity rationale" for racial classifications in university admissions. The following breakdown lists the various parts of Powell's opinion, and describes which parts were joined by other Justices:

Part I
[NOTE: Does not refer to or invoke the diversity rationale]
Powell (author)
(Joined by White, Brennan, Marshall, Blackmun)

Part II (IIA-IIB)
[NOTE: Does not refer to or invoke the diversity rationale]
Powell (author)

Part III (III-A, III-B, III-C)
[NOTE: Does not refer to or invoke the diversity rationale]
Powell (author)
(III-A joined by White)

Part IV (IV-A, IV-B, IV-C, IV-D)
[NOTE: The diversity rationale is mentioned in the introductory paragraph of this section and in IV-D, but not in the other subsections]
Powell (author)

Part V (V-A, V-B, V-C)
[NOTE: The diversity rationale is mentioned in subsections V-A and V-B, but not in V-C]
Powell (author)
(V-C joined by White, Brennan, Marshall, Blackmun)

Part VI
Powell (author)

We have mentioned a number of reasons, some a priori and some empirical, for rejecting the Powell diversity rationale.

Part I simply sets out the issues before the Court. Part V-C of Powell's opinion, which garnered a 5-4 majority, is therefore the only part of this lengthy opinion which might provide any guidance at all on the question whether racial preferences to promote racial diversity in university admissions are permissible under the federal constitution. But even this subsection of Powell's opinion fails to provide this guidance or support.

Part V-C of the Powell opinion reads as follows:

> In enjoining petitioner from ever considering the race of any applicant, however, the courts below failed to recognize that the State has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin. For this reason, so much of the California court's judgment as enjoins petitioner from any consideration of the race of any applicant must be reversed.

At first reading, this passage makes it look as though five Justices of the Court held that "properly devised" admissions policies designed to promote racial diversity are, or can be, constitutional, and that the Court's judgment was limited to finding that U.C. Davis Medical School's admissions policy was not "properly devised" to do this. That this reading is untenable becomes clear as soon as one asks the question: "Which kinds of admissions programs did these five justices believe *were* proper?" This is the crucial question, because when universities adopt such policies, they must clearly state *why* they are adopting them, and justify both their policies and their rationale for adopting them by court precedent. And V-C clearly fails to provide an answer to this crucial question.

The crucial question is: "Which kinds of admissions programs did these five justices believe were proper?", because when universities adopt such policies, they must clearly state why they are adopting them, and justify both their policies and their rationale for adopting them by court precedent. And V-C clearly fails to provide an answer to this crucial question.

This can be seen by examining the constitutional reasoning articulated by these five Justices in analyzing the case. The comparisons will show that the constitutional principles they invoked were not just different: to a large degree, they were actually incompatible. As a result, V-C fails to define a set of "properly devised" university admissions policies.

The main principles articulated by Justice Powell were as follows:

(1) Powell did not limit himself to the statutory question whether U.C. Davis' program was lawful under Title VI of the U.S. Civil Rights Act. Powell reached the constitutional question as well, and held that any program involving racial classifications must meet the test of strict scrutiny. According to Powell, the strict scrutiny test applied to all racial classifications, regardless of the race of the individual benefited or burdened by the classification.[1]

(2) Powell held that any scheme of racial balancing is unconstitutional under the Fourteenth Amendment.[2] He did not reject remedial justifications for racial preferences completely, but did circumscribe these justifications very narrowly. The exceptions might be applicable to public institutions of higher education in Southern states that had a history of *de jure* policies of racial segregation, but not for any of the controversial cases involving racial preferences that have been central to the national debate over affirmative action in university admissions (including, for that matter, U.C. Davis' program).

(3) Powell asserted that a program, like the Harvard Plan, that takes the race of an applicant into consideration on a case-by-case basis, as one of the many factors involved in creating a diverse student body, could be constitutional. He also

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[1] The Court itself adopted this interpretation of the Constitution in Richmond v. J. A. Croson Co., 488 U.S. 469 (1989) and in Adarand Constructors, Inc. v. Pena (1995).

[2] "If petitioner's purpose is to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin, such a preferential purpose must be rejected not as insubstantial but as facially invalid. Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids. E. g., Loving v. Virginia, supra, at 11; McLaughlin v. Florida, supra, at 196; Brown v. Board of Education, 347 U.S. 483 (1954)."

> asserted that the right of a university to take race into consideration, along with many others, was tied to First Amendment guarantees. (He acknowledged, however, that the First Amendment did not explicitly guarantee this right to universities.)

The other four Justices who joined in Part V-C of Powell's opinion– Brennan, Blackmun, Marshall, and White– are often referred to as the "Brennan Four." The Brennan Four's approach to the question was very different from Powell's, and in fact largely incompatible with it.

Like Powell, but unlike Stevens, Burger, Stewart, and Rehnquist, the Brennan Four reached the constitutional question. However, there were important differences:

(1) All four held that preferential admissions policies that are designed to benefit racial groups that have suffered past discrimination and that are intended to remedy the "lingering effects of past discrimination" can meet the strict scrutiny standard of judicial review.[3] But they nowhere invoke the Powell diversity rationale.

(2) Unlike Powell, the Brennan Four held that the Constitution does not impose rigorous constraints on racial classifications when they are designed to remedy the lingering effects of past societal discrimination. In particular, unlike Powell, they held that such programs do not require formal findings of the lingering effects of past discrimination by legislative, administrative, or judicial bodies.

(3) They did not believe, as Powell did, that the federal guarantee of equal protection applies to all individuals equally regardless of race.

(4) Nothing in Powell's diversity rationale entails that an applicant must be disadvantaged in order to receive a racial preference by a university's admissions program. For the Brennan Four, however, this was a strict requirement in order for a racial preference to be held constitutional.

Nothing in Powell's diversity rationale entails that an applicant must be disadvantaged in order to receive a racial preference by a university's admissions program. For the Brennan Four however, this was a strict requirement in order for a racial preference to be held constitutional.

For the Brennan Four, "disadvantage" did not mean– or did not simply mean– socioeconomic or educational disadvantage, for two reasons.

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[3] "Nonetheless, the purpose of overcoming substantial, chronic minority underrepresentation in the medical profession is sufficiently important to justify petitioner's *remedial* use of race [emphasis ours]. Thus, the judgment below must be reversed in that it prohibits race from being used as a factor in university admissions." (Bakke)

First, they held that the UC medical school's program met constitutional muster even though it gave preferences to racial minorities– in particular, to blacks and Hispanics– in its special admissions program, but did not give the same preference to socioeconomically or educationally disadvantaged whites. (In principle, disadvantaged whites could apply for the special admissions program, and many in fact did so, but not one was accepted.) Secondly, although "disadvantage" usually means socioeconomic or educational disadvantage in today's controversies over preferential admissions policies, it was only part of the meaning of "disadvantage" for the Brennan Four. For them, the crucial test of racial disadvantage was whether the minority applicant had a past history of racial exclusion from the mainstream of American life.[4] The kind of "disadvantage" that the Brennan Four considered important, therefore, was a past history of either *de jure* or *de facto* racial segregation and isolation. They believed that all the students who had received a racial preference by the U.C. Davis medical school satisfied this criterion. They also clearly believed, as Powell did not, that if the U.C. Davis Medical School had granted a preference on the basis of race to an applicant who did not satisfy this criterion, the preference would have been unconstitutional.

The Brennan Four held, though Powell did not, that a racial preference given to an applicant who had no history of "racial exclusion from the mainstream of American life" would be unconstitutional.

There has been a great deal of discussion in the legal literature about whether Powell's rationale for racial preferences in university admissions was "narrower" than the one articulated by Brennan, White, Marshall, and Blackmun. The principal problem with this question is that it presupposes–erroneously– that one or the other has to be narrower. There is no a priori reason why this should be so, and a comparison of the opinions shows that in fact neither rationale can be said to be narrower than the other. They are just *different*, like apples and oranges. Each rationale is narrower than the other on some grounds, and broader on other grounds.

Powell held that racial balancing (aiming at a fixed percentage or quota) was unconstitutional; the Brennan Four did not.

Powell's "diversity" rationale is narrower than the one given by the four Justices who joined in Part V-C of his opinion, for two reasons. First, Powell held that strict scrutiny must be applied to any racial classification, regardless of the race that is benefited or burdened, whereas Brennan, Blackmun, Marshall and White did not. Second, Powell held that racial balancing– i.e., aiming at a fixed percentage or quota–is always unconstitutional, whereas the Brennan Four did not.

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[4] "[T]he Davis admissions program does not simply equate minority status with disadvantage. Rather, Davis considers on an individual basis each applicant's personal history to determine whether he or she has likely been disadvantaged by racial discrimination. The record makes clear that only minority applicants likely to have been isolated from the mainstream of American life are considered in the special program; other minority applicants are eligible only through the regular admissions program." (Bakke)

In other respects, however, Powell's "diversity" rationale is more expansive than the ones offered by the other four Justices.

First, the Brennan Four asserted that racial preferences must be limited to applicants who have a demonstrated past history of "disadvantage," where "disadvantage" is taken to mean a combination of socioeconomic and educational disadvantage *and* a past history of racial isolation. There is nothing of this in Powell's opinion.

This is not a minor point in the context of today's controversies. In response to the abolition of racial preferences in Texas and California, and the threat of their abolition in Florida, those states have adopted what have been dubbed "X-percent" plans for their public universities. These plans are designed to maintain diversity in the absence of racial preferences by selecting the top applicants from the top X-percent of each high school in the state, rather than the top X-percent of a statewide pool of graduating seniors. Many critics of the proposals have pointed out that these plans help to maintain racial diversity only to the extent that the high schools in the state are racially segregated. But the obverse of the very same point has received little or no comment, i.e., that such programs help to expand the pool of qualified minority applicants beyond the present pool only to the extent that the present pool of minority applicants does *not* come from racially isolated high schools. This is an irrelevant consideration for the Powell "diversity" criterion, but the fact is fatal to the racial isolation and socioeconomic and educational disadvantage criterion of the Brennan Four.

That X-percent plans serve to maintain racial diversity only to the extent that the existing pool of applicants does not come from racially segregated high schools is an irrelevant consideration for Powell's diversity rationale, but is fatal to existing admissions policies under the criterion of the Brennan Four.

Second, some racial groups have suffered significant past discrimination but are not underrepresented (indeed are "over-represented") in select colleges and universities. This is highly problematic for the Brennan Four's rationale for racial preferences in university admissions, but not for Powell's "diversity" rationale.

Jews and Asian-Americans have faced significant discrimination in the past, but are "over-represented" in select colleges and universities. Yet a strict and consistent application of the Powell "diversity" rationale would operate to discriminate against *them.* (Indeed, it is widely understood that the University of California's pre-209 admissions policies were designed as much to place caps on the enrollment of Asian-Americans as they were to place a floor under blacks and Hispanics.) Present-day discrimination against individuals belonging to racial groups that have faced discrimination in the past is much harder to justify under the rationale articulated by the Brennan Four than it is under the rationale articulated by Powell. The Brennan Four's emphasis on past discrimination is problematic for these groups. True, the rationale of the Brennan Four doesn't make them candidates for racial preferences, since they do not suffer the "lingering effects of past

The Brennan Four sharply criticized the constitutional reasoning behind Powell's diversity rationale.

discrimination." But it certainly doesn't make them candidates for racial discrimination either.

It is also important to note that the Brennan Four did more than simply fail to endorse or join in those sections of Powell's opinion that set forth the "diversity" rationale. They also sharply criticized the constitutional reasoning behind Powell's individual opinion.

Powell's stricture against racial balancing is in clear tension with the way that racial preferences are likely to work in practice, even in the case of diversity schemes like the Harvard Plan.

According to Powell, any scheme of racial preferences must meet the test of strict scrutiny, regardless of the race that is benefited or burdened. Among other things, that stringent test requires a showing that a scheme of racial preferences does not involve "stigmatic harm" to any group. Furthermore, according to Powell, any scheme of racial preferences that aims at racial balancing, precisely because it favors groups rather than individuals, is "stigmatic," and therefore offends the Fourteenth Amendment. According to Powell, the only preferential admissions program that can meet the test of strict scrutiny is one that gives individualized, particularized consideration to race as one of many factors, and on a case-by-case basis, where every applicant competes against every other one for the available slots.

The problem for Powell is that his stricture against racial balancing is in obvious tension with the way that racial preferences are likely to work in practice, including the Harvard Plan. Consider, for example, Harvard's own description of the Plan, taken from an official statement that Justice Powell provides as an Appendix to his own opinion in Bakke:

> In Harvard College admissions the Committee has not set target-quotas for the number of blacks, or of musicians, football players, physicists or Californians to be admitted in a given year. At the same time the Committee is aware that if Harvard College is to provide a truly heterogen[e]ous environment that reflects the rich diversity of the United States, it cannot be provided without some attention to numbers. It would not make sense, for example, to have 10 or 20 students out of 1,100 whose homes are west of the Mississippi. Comparably, 10 or 20 black students could not begin to bring to their classmates and to each other the variety of points of view, backgrounds and experiences of blacks in the United States. Their small numbers might also create a sense of isolation among the black students themselves and thus make it more difficult for them to develop and achieve their potential. Consequently, when making its decisions, the Committee on Admissions is aware that there is some relationship between numbers and achieving the benefits to be derived from a diverse student body, and between numbers and providing a reasonable environment for those students admitted. But ... that awareness does not mean that the Committee sets a minimum number of blacks or of people from west of the Mississippi

> who are to be admitted. It means only that in choosing among thousands of applicants who are not only "admissible" academically but have other strong qualities, the Committee, with a number of criteria in mind, pays some attention to distribution among many types and categories of students.

According to Powell's constitutional reasoning, one must be able to draw a distinction between admission programs like Harvard's and a scheme of racial balancing. But as a practical matter there is likely to be no such distinction. This point was not lost on the Brennan Four, who made it very forcefully:

> Finally, Davis' special admissions program cannot be said to violate the Constitution simply because it has set aside a predetermined number of places for qualified minority applicants rather than using minority status as a positive factor to be considered in evaluating the applications of disadvantaged minority applicants. For purposes of constitutional adjudication, there is no difference between the two approaches. In any admissions program which accords special consideration to disadvantaged racial minorities, a determination of the degree of preference to be given is unavoidable, and any given preference that results in the exclusion of a white candidate is no more or less constitutionally acceptable than a program such as that at Davis. Furthermore, the extent of the preference inevitably depends on how many minority applicants the particular school is seeking to admit in any particular year so long as the number of qualified minority applicants exceeds that number. There is no sensible, and certainly no constitutional, distinction between, for example, adding a set number of points to the admissions rating of disadvantaged minority applicants as an expression of the preference with the expectation that this will result in the admission of an approximately determined number of qualified minority applicants and setting a fixed number of places for such applicants as was done here. ...
>
> The "Harvard" program, ..., as those employing it readily concede, openly and successfully employs a racial criterion for the purpose of ensuring that some of the scarce places in institutions of higher education are allocated to disadvantaged minority students. That the Harvard approach does not also make public the extent of the preference and the precise workings of the system while the Davis program employs a specific, openly stated number, does not condemn the latter plan for purposes of Fourteenth Amendment adjudication. It may be that the Harvard plan is more acceptable to the public than is the Davis "quota." If it is, any State, including California, is free to adopt it in preference to a less acceptable alternative, just as it is gener-

"In any admissions program which accords special consideration to disadvantaged racial minorities, a determination of the degree of preference to be given is unavoidable, and any given preference that results in the exclusion of a white candidate is no more or less constitutionally acceptable than a program such as that at Davis."
–The Brennan Four

> ally free, as far as the Constitution is concerned, to abjure granting any racial preferences in its admissions program. But there is no basis for preferring a particular preference program simply because in achieving the same goals that the Davis Medical School is pursuing, it proceeds in a manner that is not immediately apparent to the public.

According to Powell, an individual's Fourteenth Amendment rights are violated if a university gives a precisely weighted racial preference to another applicant in its admissions decision, but the individual's right is not violated if it applies a rough, less precisely weighted preference to accomplish the same result. As the Brennan Four point out, there is no sensible or constitutional basis for this distinction. This shows the sharpness of the differences that lie beneath the language of Part V-C of Powell's opinion. The underlying constitutional principles held by the five Justices were very different, and to great extent, even antithetical. The justifications offered by Powell, on the one hand, and the Brennan Four, on the other, do not describe identical sets of constitutionally permissible programs, nor even identical sets of minority candidates eligible for constitutionally permissible programs.

The justifications offered by Powell, on the one hand, and the Brennan Four, on the other, do not describe identical sets of constitutionally permissible programs, nor identical sets of minority candidates eligible for such programs.

It might seem odd that the Bakke Court reached a judgment in the case, but not an opinion about the constitutional issues that the case brought before it, but in fact this is not uncommon. When it happens, later court rulings and opinions hold that the earlier ruling and opinions cannot be cited as a precedent for the matter at issue, on the grounds that there is no "common denominator" in the earlier opinion.[5]

The Bakke Court reached a judgment in the case, but not an opinion about the constitutional issues that the case brought before it. It is common for a court to hold that there is no precedential value in an earlier opinion when there is no "common denominator" in the opinion itself.

THE FIRST AMENDMENT ISSUE

As we have argued in the preceding section, the Brennan Four say nothing about the diversity rationale (except to criticize the constitutional reasoning behind it). Furthermore, nothing in the rationale they do give for racial preferences (a remedial one) can be used to carve out a special exemption for higher education from the Fourteenth Amendment at all. The Brennan Four were clearly unwilling to follow Powell in his attempt to carve out a novel, narrow, and special privilege for educational institutions. And they had good reason for not doing so.

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[5] Cf. Rutledge v. United States, 517 U.S. 292,298-99 (1996); Ass'n of Bituminous Contractors, Inc., v. Apfel, 156 F.3d 1246, 1254 (D.C. Cir. 1998); Rappa v. New Castle County, 18 F.3d 1043, 1056-58 (3d Cir. 1994); United States v. Eckford, 910 F.2d 216, 219 & n. 8 (5th Cir. 1990); Schindler v. Clerk of Circuit Court, 715 F.2d 341, 345 n. 5 (7th Cir. 1983); United States v. Robles-Sandoval, 637 F.2d 692 n. 1 (9th Cir. 1981) ("The Court in *Baldasar* divided in such a way that no rule can be said to have resulted."); United States v. Castro-Vega, 945 F.2d 496, 499-500 (2d Cir. 1991); Nichols v. United States, 511 U.S. 738, 745-46 (1994).

To the unwary, the tension between Powell's interpretation of the First Amendment and the clear meaning of the Fourteenth Amendment might appear less sharp than it is, because Powell's opinion makes the First Amendment and Fourteenth Amendment issues look more similar than they are. According to Powell's opinion, the First and Fourteenth Amendments are analogous, at least for this particular question, because they both favor, at least implicitly, greater inclusiveness and diversity. This suggestion undoubtedly serves to make Powell's "diversity" rationale appealing to those who would like to think that the effort to promote the diversity of views, student backgrounds, and viewpoints on campuses stands in the same relation to the First Amendment that the national effort to promote greater racial diversity and inclusiveness in American society that began to take hold in the 1960s stands to the Fourteenth Amendment

But Powell's appeal to First Amendment considerations does not withstand examination. While it is a sound principle of governance and public policy that institutions of higher education should in general be free to pursue their educational missions and goals without government interference, it is not true that they should be free to do so only if they pursue a student body that represents a *diversity* of views and student backgrounds. An institution with a different conception of its educational purpose and mission than Harvard's is also equally free under the First Amendment to select a student body that is more homogeneous and less diverse. This is, in effect, the kind of student body that one might expect many denominational colleges and universities to pursue, and in fact many small secular, liberal arts colleges undoubtedly do the same, whether they announce this publicly or not.

According to the American Council on Education, there are 3,700 institutions of higher education in the U.S., enrolling more than 14.3 million students.[6] These institutions operate in a highly competitive market, and are constantly on the lookout for a market niche that that they can exploit. Part of this involves marketing their institutions to certain kinds of students, whom they might reasonably expect would want to attend them. Because of these free market forces, America's system of higher education is undoubtedly the most diverse in the world. However, it has this distinction for a very different reason than the one suggested by Powell. While many institutions pursue, to varying degrees, diversity of backgrounds and views in their student bodies, it is not so much the diversity *within* institutions that creates the diversity in American higher education. That diversity is due much more to diversity *across* institutions.

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[6] http://www.acenet.edu/faq/viewInfo.cfm?faqID=18

Powell cited Harvard (his own alma mater) as an example of an institution that wanted a diverse student body on a wide range of characteristics, of which race was only one. In our system of higher education and under our system of governance, Harvard is in general perfectly free to pursue that goal. But there is no special constitutional protection for Harvard and like-minded institutions to pursue this goal, since an institution has the very same prerogative in our system of higher education and under our system of governance to pursue a more cohesive, homogeneous, and non-diverse student body. Harvard's diversity rationale simply does not have the special constitutional protection that he seems to have thought it did.

The cases cited by Powell cannot be construed as asserting a right on the part of colleges and universities to pursue policies that are facially in conflict with the commands of the Fourteenth Amendment.

The weakness of Powell's appeal to First Amendment considerations comes into clearer view when one looks carefully at the legal precedents he cited. Both of them– Sweezy v. New Hampshire, 354 U.S. 234, 263 (1957) and Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967)– concerned challenges to two state laws (the first in New Hampshire, the second in New York) that made it unlawful for state universities to hire faculty who belonged to, were affiliated with, or expressed sympathy with, certain "subversive organizations." (The targets were the Progressive and Communist parties of the United States.) In these cases, First Amendment issues were clearly in play, and in both cases the Court ruled the statutes unlawful under the First Amendment. But these were standard, garden variety, First Amendment cases. They were decided on the grounds that the First Amendment prohibited federal or state governments from proscribing certain political views, including those that were deemed by New Hampshire and New York to be "subversive." It is true that by virtue of these decisions the viewpoints expressed on university campuses in these states were, or could be, more diverse than they would have been had the Court ruled the other way. But the Court did not strike down the laws on the grounds that institutions of higher education have a First Amendment right to pursue a *diversity*of political viewpoints. It struck them down on the quite different grounds that states have no right to prohibit the expression of political views on state-supported campuses, because the First Amendment prohibits that kind of interference with political discourse. By no stretch of the imagination can these decisions be construed as asserting a right on the part of colleges and universities to a broad, First Amendment right that is facially in conflict with the plain commands of the Fourteenth Amendment.

If the Aryan Nation established college that had a racially exclusive admissions policy aimed– consistent with its first principles– at an entirely white student body, would its mission have First Amendment protection? Of course not.

In Bakke and similar cases, what is at issue is whether the Fourteenth Amendment permits a university to use racial classifications in the selection of its student body. Powell sought to assert a constitutional connection between this Fourteenth Amendment issue and the question of whether a state can exclude certain political viewpoints (even allegedly "subversive" ones) without offending a plaintiff's First Amendment rights of free speech. But these are clearly *different* constitutional issues. In both Sweezy and Keyishian, the Court simply extended First Amendment guarantees to state-supported institutions of higher education, an area of American life which it deemed to be especially sensitive to First Amendment concerns. But the Court did not carve out a special right for institutions of higher education that immunizes them against other constitutional constraints, including the Fourteenth Amendment's guarantee of equal protection of the laws. After all, no one accuses universities that do *not* use race-conscious measures of excluding political viewpoints in a way that offends the First Amendment. Yet that preposterous claim is the only one that can plausibly be drawn from Powell's invocation of the First Amendment principles enunciated in Sweeny and Keyishian.[7]

Since Bakke, the Court has so drastically limited the sweeping remedial justifications for racial preferences endorsed by the Brennan Four as to render this rationale virtually useless for the kinds of cases that are at the heart of the current national debate over affirmative action in university admissions.

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[7] Cf. Keyishian:

> "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. 'The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.' Shelton v. Tucker, supra, at 487. The classroom is peculiarly the 'marketplace of ideas.' The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection.'"

Powells' Bakke opinion cites this passage, but omits the following one: " ... which does not tolerate laws that cast a pall of orthodoxy over the classroom. 'The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.' Shelton v. Tucker, supra, at 487. The classroom is peculiarly the 'marketplace of ideas.'" (The author of the Court's opinion in Keyishian was William F. Brennan.)

The other citation by Powell is from the concurring opinion of Justices Frankurter and Harlan in Sweezy. Their opinion cites from a conference of senior scholars from the University of Cape Town, S. Africa, and the University of the Witwatersrand, including A. v. d. S. Centlivres and Richard Feetham, as Chancellors of the respective universities:

As usual, the clearest and most forceful way of driving this point home is to ask what the constitutional picture would be if the shoe were on the other foot. If the Aryan Nation established an institution of higher education that had a racially exclusive admissions policy aimed (consistent with its first principles) at an entirely white student body, would its educational aim and mission have First Amendment protection? Of course not, because the right of a public college to pursue its educational mission free from government interference, and the right of a private institution to do so while receiving government monies, is constrained by the Fourteenth Amendment's guarantee of equal protection of the laws, which the Court has defined as a guarantee that individuals must not be treated differently on the basis of their race. And the defining feature of the Davis plan, the Harvard plan, and all their sequelae, is that they do just this.

CROSON AND ADARAND

The case against racial preferences in university admissions is even stronger now than it was in 1978 when Bakke was decided. In Bakke five of the Justices– Powell, Brennan, Blackmun, White, and Marshall– reached the constitutional question. They held that racial preferences for minorities can meet the strict scrutiny standard, but they did so, at least in part, on the grounds that discrimination against whites and discrimination against minorities are not constitutionally equivalent.[8] Burger, Stewart, Stevens, and Rehnquist did not reach the constitutional question, and addressed the lawfulness of Davis' admissions policy only as a recipient of federal monies under Title VI.

> ". . . It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail 'the four essential freedoms' of a university– to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." The Open Universities in South Africa 10-12.

One can easily imagine the Chancellors of these two South African universities arguing in this way for the protection of unfettered political expression at their universities, but not for racial diversity there.

[8] "Unquestionably we have held that a government practice or statute which restricts 'fundamental rights' or which contains 'suspect classifications' is to be subjected to 'strict scrutiny' and can be justified only if it furthers a compelling government purpose and, even then, only if no less restrictive alternative is available. ... But no fundamental right is involved here. ... Nor do whites as a class have any of the 'traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.' Id., at 28; see United States v. Carolene Products Co., 304 U.S. 144, 152 n. 4 (1938)." (Bakke)

Since then, the Court has taken the decisive step (in Croson and Adarand) of holding that all racial classifications, regardless of the race of the individual or individuals benefited, must meet the test of strict scrutiny. At the same time, it has so drastically limited the sweeping remedial justifications for racial preferences endorsed by the Brennan Four as to render their rationale virtually useless for the kinds of cases that are at the heart of the current national debate over affirmative action in university admissions.

Accordingly, the Fifth U.S. Circuit Court of Appeals categorically rejected Powell's "diversity" rationale in Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996). In Hopwood, the Fifth Circuit drew the only logical conclusion that can be drawn from subsequent judicial developments, based on the following considerations:

(1) The Court has repudiated remedial justifications for racial classifications for all but the narrowest class of cases, and in any case in such a way as to preclude their use in the types of cases that are involved in virtually all of the continuing controversies over preferential forms of affirmative action in higher education.

(2) Four of the Justices who upheld Davis' plan, and who joined in Part V-C of Powell's opinion, made no exception for higher education in the case they made for racial preferences; in particular, they did not join Powell in trying to connect Bakke and Bakke-like cases to First Amendment protections.

(3) No other Justice joined the parts of Powell's own opinion where he developed and argued for the "diversity rationale" for racial preferences.

(4) Part V-C of Powell's opinion, which states that a state has "a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin," garnered the support of four other Justices of the Bakke court, but for reasons different from, and largely incompatible with, Powell's diversity rationale.

(5) The Court has subsequently rejected the justifications provided for racial preferences by the Brennan Four, and while it has never had occasion to explicitly repudiate Powell's diversity justification for racial preferences in higher education in the same way, it has never endorsed it either.

Since the Court has held that all racial classifications must meet the strict scrutiny test, and only one Justice has ever held that the use of racial classifications in university admissions can meet that test under the diversity rationale, the Hopwood Court concluded, quite logically, that any use of racial classifications in university admissions is unconstitutional.

(6) Since the Court has held that all racial classifications must meet the strict scrutiny test, and only one Justice has ever held that the use of racial classifications in university admissions can meet that test regardless of the race of the individuals who are benefited or burdened, the Hopwood Court concluded, correctly, that the use of racial classifications in university admissions is presumptively unconstitutional.

When the Fifth U.S. Circuit Court of Appeals issued its opinion, defendants petitioned the U.S. Supreme Court for *certiorari*, but it was denied. As a result, Hopwood, which explicitly repudiated Powell's lone, singular opinion in Bakke and its "diversity" rationale for racial preferences, is now the law in the Fifth Circuit, comprising Texas, Louisiana, and Mississippi.

Advocates of racially preferential admissions policies in higher education have described these policies, particularly after Hopwood, as "hanging by a thread."[9] In fact, universities who persist in these kinds of programs are probably more aptly compared to Wile E. Coyote, who has run off a cliff somewhere in the desert of the American Southwest but who won't admit it to himself, and who keeps his legs moving furiously although there is nothing but empty air underneath him, without even so much as a thread to hold him up.

One sign that things have been going badly for the legal defenders of racial preferences is that they have been forced to look outside the Powell opinion itself for justifications of their policies. For example, William Bowen , former president of Princeton University, has asserted as an expert witness in the Gratz v. Bollinger litigation that universities have a right, despite the Fourteenth Amendment, to employ racial preferences in their admissions program simply out of a desire– perhaps enshrined in their formal mission statements– of having black and Hispanic graduates of their institutions in important positions in the public and private sectors of American life.[10, 11]

The fact that universities feel impelled now to produce empirical evidence that racial diversity makes a contribution to educational outcomes shows that the ground has shifted. Now, at the very least, the First Amendment right that Powell asserted cannot be taken for granted.

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[9] Amar and Katyal 1996: 1745.

[10] "... a university's obligation to try to serve the long-term interests of society defined in the broadest and least parochial terms, and to do so through two principal activities: advancing knowledge and educating students who in turn will serve others, within this nation and beyond it, both through their specific vocations and as citizens." (Bowen 1998: 2)

[11] "Corporations are making significant efforts in recruiting and retaining a workforce that values diversity and that can effectively conduct business worldwide. There is no question that graduates of universities with diverse populations–whether minorities or nonminorities–offer the advantage of being

In their book *The Shape of the River*, Bowen and former Harvard University president Derek Bok argue that such policies are justified because they say that such preferences aid in the development of the black middle class. They even claim that "The [College & Beyond] minority graduates with advanced degrees are the *backbone* [emphasis ours] of the emergent black and Hispanic middle class."[12]

The fatuity of the latter claim becomes clear as soon as one considers some actual numbers. According to the U.S. Census Bureau, there were 35.1 million blacks in the U.S. in 1999.[13] In 1996, 40 percent of blacks regarded themselves as members of the middle class, a survey finding that is in rough correspondence with the income statistics for black Americans compiled by the U.S. Census Bureau.[14] Forty-one percent of 35.1 million is 14 million. The number of black graduates of College & Beyond-type institutions (i.e., the most selective ones) has to be miniscule by comparison, and the number of black graduates from such institutions with *advanced* degrees (the criterion Bowen and Bok actually use) must be even smaller. For example, there were only 403 males and 533 females in the entire sample of blacks in the College & Beyond study. It is true that these are the numbers for the sample sizes; nevertheless, the sample was drawn from 28 institutions, both public and private, and this gives some indication of the relatively small size of the underlying population (the nation's most selective institutions of higher education). Whatever the size that underlying population might be, it has to be dwarfed by the size of the very large and growing black middle class.

There is now virtually no limit to the sweep or scope of the constitutional right that is being asserted. Universities are said to have a constitutional right to treat applicants differently on the basis of their race because there is a compelling state interest in having a large and prosperous black and Hispanic middle class, or to provide corporations with a workforce that is racially diverse and that "values diversity." But if that is a compelling state interest, why shouldn't elementary schools, corporations, government agencies and in fact anyone and everyone else be able to assert the same right? Where is the nexus between a claimed constitutional right of this sort and the constitutional protections that Justice Powell claimed to find for universities in the First Amendment? If Powell thought that the right of a university to treat applicants differently on the basis of race could be grounded in a compelling interest to develop a black and Hispanic middle class, it is

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valuable co-workers and managers in this increasingly diverse business climate." (Ibid., 15)

[12] Bowen and Bok 1998: 116.

[13] U.S. Census Bureau: 1. http://www.census.gov/prod/2000pubs/p20-530.pdf

[14] Thernstrom 1998: Table 9, p. 200. Census Bureau: 5.

very hard to see why he felt it necessary to invoke the First Amendment at all, or to insist on a careful, individualized, case by case comparison of all applicants whenever racial classifications are invoked. In fact it is clear that the kinds of considerations that have recently been invoked by Bowen and Bok and many others in the higher education establishment have nothing to do with Powell's own reasoning in his Bakke opinion. His opinion was based solely on the assertion of a First Amendment right, allegedly possessed by universities, to use racial classifications in order to offer a better education to their *students*.

The present report is intended to shed some light on the empirical claims that various universities and the higher education establishment (particularly the American Council on Education and its affiliated), have been making in and out of court as their admissions policies have faced increasing hostility in federal courts and in the court of public opinion.

But perhaps the clearest evidence of a shifting legal landscape is this: universities now feel that they have to defend even the original version of the diversity rationale (i.e., the one articulated by Powell in his lone opinion in Bakke) in a way they never did before. In 1978 Powell did not feel it necessary to cite any findings from social science or educational research asserting a correlation between racially diverse student bodies and positive educational outcomes. His effort in this direction, which was nothing more than handwaving, was limited to a wholly undocumented and unsubstantiated reference to "tradition" and "experience."[15]

If universities did have a special dispensation from the clear command of the Fourteenth Amendment on the grounds that Powell asserted, no evidence of this sort would be needed. Although Powell does refer to the (unspecified and undocumented) "tradition" and "experience" of the academic community that "lend support to the view that the [educational] contribution of diversity is substantial," there is nothing in Powell's opinion that suggests that the First Amendment right he wished to articulate was *contingent* on the truth of the claim that diversity in fact makes such a contribution.

Thus, the mere fact that universities now feel impelled to produce hard empirical evidence that diversity does make a contribution to educational outcomes is clear evidence that, particularly after Hopwood, the ground has shifted. Even universities and the higher education establishment no longer believe that their policies can be based on a bare, unsubstantiated assertion that they have a right under the First Amendment to employ racial preferences in their admissions policies. Today, the claim is that a university has a right to employ racially preferential admissions policies, not because of some constitutionally protected right to pursue such policies, nor even because it has a right to do so if it *thinks* that a racially diverse student body is conducive to positive educational outcomes, but because there is in fact such a correlation. Here, too, universities are manifestly engaged in an effort to persuade the lower federal courts, and ultimately the Supreme Court, to create *new* law.

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[15] "But even at the graduate level, our tradition and experience lend support to the view that the contribution of diversity is substantial."

The present critique is intended to shed some light on the empirical claims that various universities and the higher education establishment– especially the American Council on Education and its affiliated members at One Dupont Circle in Washington, D.C.– have been making in and out of court as their admissions policies have faced increasing hostility in the courts and in the courts of public opinion. So far as we know, the present report is the only comprehensive, critical examination to date of these claims. We are all the more eager to undertake this examination since, as we will show in great detail, the empirical research on the question, which is in fact extensive, demonstrates quite clearly that the hypothesis that the racial diversity of the student is correlated with positive educational outcomes must be rejected.

It does not follow from this research finding, of course, that racial diversity isn't a goal that is worth pursuing. It is a worthwhile goal, if for no other reason than that there will always be racial tension in American society as long as there are significant disparities in the degree to which different racial and ethnic groups participate in, and succeed in, the major institutions of American life. But this is as true of higher education as it is of all the other major institutions of American life. The point that we are making here is simply that it is not *more* true of higher education than it is of other important institutions in American life, as the universities themselves and their lobbying organizations are claiming.

Clearly, racial diversity is a worthwhile goal (provided that the goal is pursued by constitutional means). But the claim that the racial diversity of a student body is correlated with beneficial educational outcomes is another matter.

There are unquestionably significant *societal* benefits to racial diversity in universities, just as there are unquestionably significant societal benefits to integrated work forces, integrated residential areas, integrated private and public schools at the K-12 level, racial diversity in arts and professions, and so on. American society should pursue racial diversity and inclusiveness vigorously whenever it is possible to do so by fair, reasonable, and constitutional means. But the question whether racial diversity is connected with positive educational outcomes in the university environment is a separate question.

Educational researchers have for some time now been engaged in measuring the impact that many different aspects of university life, including library resources, the research orientation of the faculty, the socioeconomic status of the students attending an institution, the selectivity of an institution as reflected in GPAs and SAT scores, etc., and there is a standard, well-established methodology for approaching such questions. These studies have found numerous educationally significant correlations between many of these factors and final student outcomes. It turns out, however, the racial diversity of the student body

Contrary to what universities are asserting, racially preferential admissions policies are not well grounded in the Constitution or the case law. On the contrary, universities are asking courts to create new law.

is not one of them. Again, this does not mean that racial diversity of the student body is not desirable. But it does mean that universities and their lobbying organizations at One Dupont Circle cannot claim a special dispensation from the commands of the Fourteenth Amendment on the basis of the contrary claim.

PART II

ACCREDITATION

THE STANDARDS FOR INSTITUTIONAL ACCREDITION

Universities that use racial preferences in their admissions policies and the higher education establishment at One Dupont Circle have claimed that there is an overwhelming consensus in American higher education that educational excellence and campus racial diversity are connected. This claim is demonstrably untrue. As we will show in detail in Part III, students and faculty overwhelmingly reject the very policies that universities are with increasing frequency having to defend before hostile courts. Equally importantly, however, the claim that educational excellence requires campus racial diversity is not even supported by the associations that accredit institutions of higher education, even though these organizations are themselves the creatures of the very colleges and universities they accredit.[16]

The claim that educational excellence requires racial diversity is not even supported by the associations that accredit institutions of higher education, even though these organizations are themselves the creatures of the very institutions that they accredit.

To help put the matter in perspective, it is important to note that there is one very general reason why diversity in general (not just racial diversity) cannot be regarded as an academic "standard" in the way that the quality of the curriculum, the size and quality of library resources, financial aid, student selectivity, quality of the teaching faculty, etc. are.

Making intellectual judgments and intellectual distinctions is part of the life of the mind. Universities make such judgments all the time. Intellectually and academically, it is perfectly defensible to hold that some opinions, views, theories, and works are more valuable than others; indeed, it is hard to see how the life of the mind could survive in the absence of such evaluative judgments. As a result, it cannot be said that academic or intellectual judgments generally tend toward greater, rather than less, diversity.

Of course, the well-educated person will be able to *understand* viewpoints and theories with which he or she disagrees, and it is an essential function of colleges and universities to foster critical thinking about opposing viewpoints. But that is a very different matter from claiming that all opinions or points of view must be represented in an academic institution, or that institutions of higher education must have individuals on the faculty and in their student bodies that hold the full range of opinions that are held on a given subject in or in a particular area. If that were true, and if there were a "consensus" about it in American higher education, Catholic colleges would have to have atheists on their faculty and in their student bodies, and departments and institutions offering a social science curriculum intentionally ori-

Two of the seven accrediting agencies have no standards for "diversity" at all.

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[16] Accreditation by one of the agencies recognized by the U.S. Secretary of Education's Office of Postsecondary Education is a requirement for eligibility for federal funding. The history of the regional accrediting associations is given in some detail in Orlans 1975, and summarized in California Association of Scholars 1993: 8-13.

ented towards progressive or radical politics would have to include a representative sample of paleoconservatives and libertarians in their faculties. Of course, an institution is free to choose to pursue representational diversity as an educational goal, but that is its choice. It certainly isn't part of the academic community's notion of academic excellence.

Representational diversity, even with respect to the representation of different viewpoints and opinions, is not part of the academic community's conception of educational excellence.

The ambiguous, highly problematic nature of representational diversity as an educational value or standard is clearly reflected in the guidelines and criteria used by the agencies that accredit institutions of higher education. Two of the agencies, the Commission on Colleges of the Southern Association of Colleges and Schools, and the American Academy for Liberal Education, do not mention affirmative action or diversity in their criteria and guidelines for accreditation at all. Furthermore, even the agencies that do include "diversity" in their guidelines and criteria for accreditation almost invariably qualify the diversity standard with phrases like "consistent with the institution's mission and purposes" or "in keeping with its mission and admission policy."

The highly problematic nature of "diversity" as an educational value is clearly reflected in the criteria for institutional accreditation. Even the agencies that do include "diversity" in their guidelines invariably qualify the diversity standard with phrases like "consistent with the institutions's mission and purposes."

We provide below a sampling of the language that appears in the standards of the accrediting agencies that do include "diversity" in their guidelines:[17]

Middle States Association of Colleges and Schools / Commission on Higher Education

> The admissions program should provide materials that help applicants make informed decisions and should encourage diversity in the student population, *consistent with the institution's mission, goals, and resources* [emphasis ours].
>
> *Consistent with institutional mission and sponsorship* [emphasis ours], [governing board] members should represent different points of view, interests, and experiences as well as diversity in characteristics such as age, race, ethnicity, and gender.

New England Association of Schools and Colleges / Commission on Institutions of Higher Education

> The institution observes pertinent legal requirements related to equal employment opportunity *and compatible with its mission and purposes* [emphasis ours], addresses its own goals for the achievement of diversity of race, gender, and ethnicity. Faculty

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[17] A fuller compilation is provided in Appendix I.

> selection reflects the effectiveness of this process and results in a variety of intellectual backgrounds and training.
>
> *In accordance with its mission and purposes* [emphasis ours], the institution in providing co-curricular services adheres to both the spirit and intent of equal opportunity and its own goals for diversity.

North Central Association of Colleges and Schools / Commission on Institutions of Higher Education

> In determining appropriate patterns of evidence for this criterion, the Commission considers evidence such as: ... policies and practices *consistent with its mission* [emphasis ours] related to equity of treatment, nondiscrimination, affirmative action, and other means of enhancing access to education and the building of a diverse educational community ...

Northwest Association of Schools and Colleges / Commission on Colleges

> The institution, *in keeping with its mission and admission policy* [emphasis ours], gives attention to the needs and characteristics of its student body with conscious attention to such factors as ethnic, socioeconomic, and religious diversity while demonstrating regard for students' rights and responsibilities.
>
> Educational institutions should contain within their environment the essence of the qualities they endeavor to impart, including the requirement of nondiscrimination. They have a responsibility to develop selection and promotion standards and procedures based on principles which consider qualities, aptitudes, or talents simply as they pertain to the requirements of the position, with due regard for affirmative action.

Western Association of Schools and Colleges / The Senior College Commission

> ON THE GUIDELINES:
>
> The Commission has identified in the Guidelines expected forms or methods of demonstrating performance related to certain Criteria for Review. In many of these cases institutions have requested specific interpretation of the Commission's meaning and, in others, the Commission has found through its extensive interactions with institutions and evaluation teams the need to identify the normative way institutions would be able to address the Criterion for Review referenced by the Guideline. By design,

the Commission has not developed a Guideline for each Criterion for Review; nor in many instances are the Guidelines intended to address the full scope of the particular Criterion.

Where Guidelines are identified, the Commission is attempting to assist institutions with further interpretation of the Criteria for Review and provide intended ways institutions can demonstrate they have addressed them.

QUESTIONS FOR INSTITUTIONAL ENGAGEMENT: CRITERIA FOR REVIEW

1.5 Consistent with its purposes and character, the institution demonstrates an appropriate response to the increasing diversity in society through its policies, its educational and co-curricular programs, and its administrative and organizational practices.

{GUIDELINE: The institution has demonstrated institutional commitment to the principles enunciated in the WASC Statement on Diversity.}

QUESTIONS FOR INSTITUTIONAL ENGAGEMENT

3. How does the institution ensure that issues of diversity are appropriately engaged and that a climate of respect for a diversity of backgrounds, ideas and perspectives is fostered among its members?

TEACHING AND LEARNING: CRITERIA FOR REVIEW

2.2 ... Baccalaureate programs engage students in an integrated course of study of sufficient breadth and depth to prepare them for work, citizenship, and a fulfilling life. These programs also ensure the development of core learning abilities and competencies including, but not limited to, college-level written and oral communication, college-level quantitative skills, information literacy, and the habit of critical analysis of data and argument. In addition, baccalaureate programs actively foster an appreciation of diversity, civic responsibility, the ability to work with others, and the capability to engage in lifelong learning.

FACULTY AND STAFF: CRITERIA FOR REVIEW

3.2 The institution demonstrates that it employs a faculty with substantial and continuing commitment to the institution sufficient in number, professional qualifications, and diversity to achieve its educational objectives, to establish and oversee

> academic policies, and to ensure the integrity and continuity of its academic programs wherever and however delivered.

There are a couple of things to note about these "standards." First, "diversity" in general is not treated as an unqualified good or as a necessary component of educational excellence across institutions, since they invariably include such qualifications as "consistent with institutional mission and purpose." Second, precisely because "diversity" in general is qualified in this way, there is a very real question whether "diversity" can be regarded as a bona fide standard at all, even in the guidelines and handbooks of the accrediting agencies that do include such "standards." Without a doubt, the well-established, traditional standards of academic quality and excellence, such as the quality of the faculty, the size and quality of the library collections, the quality of student services, or the academic selectivity and quality of the student body, are not qualified in this way, nor would it make any sense to do so. Imagine a "standard" to the effect that an institution must offer an acceptable level of library holdings or an acceptable level of quality of instruction in the classroom "consistent with its institutional mission or purpose"!

This observation reflects the fact that representational diversity has never been embraced as an academic standard or value essential to quality education. This is true for "diversity" generally, but it is also true for racial and ethnic diversity specifically.

Because the diversity standards are qualified in this way, they cannot be regarded as bona fide standards at all. Are there standards that require an institution to maintain an acceptable level of quality of instruction in the classroom "consistent with its institutional mission or purpose?" Of course not. This shows that representational diversity has never been embraced as a value or standard by the higher education community.

Typically, the accrediting agency standards subsume the question of racial and ethnic diversity under a general "diversity" rubric, rather than treating the matter separately. Still, some of the most contentious and divisive controversies within the accrediting community in recent years have been over proposed standards for racial and ethnic diversity. This is not the place to recount these controversies, though our bibliography does include references, including a number from higher education's leading trade journal, *The Chronicle of Higher Education*, that cover them in some detail.[18] Instead, we will examine statements on affirmative action and diversity that have been adopted by the Commission on Higher Education of the Middle States Association of Colleges and Schools (MSACHE) and the Accrediting Commission for Senior Colleges and Universities of the Western Association of Schools and Colleges (WASC). These two documents, which were adopted separately from the official guidelines, and which are intended to supplement the official standards and guide the member institutions in interpreting them, clearly reveal the problematic character of "diversity" as a standard in the accreditation of institutions of higher education.

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[18] Billingsley 1993; Davis 1993; Jaschik 1991a,b; Jaschik 1990; Leatherman 1993a,b; Leatherman 1992; Leatherman 1991; Leatherman 1990; Saunders 1993; Schonberger 1990; Seebach 1993; Tuller 1993; Washington Times Editorial 1993; Wilson 1992. The controversies became so intense that at one point United Educators Insurance Risk Retention Group Inc. decided to drop its coverage of accrediting activities. "It's controversial," said the vice-president of the company with reference to the diversity criterion. "If it's controversial, it's something people will fight over–in court." Leatherman 1991.

MSACHE's "Statement Concerning the Application of Equity and Diversity Principles in the Accreditation Process"

In 1988, the adoption by MSACHE of diversity standards led to sharp confrontations with then-U.S. Secretary of Education Lamar Alexander, who regarded the diversity criteria as politicized and educationally irrelevant. Secretary Alexander even took the extraordinary step of deferring Middle States' own accreditation by the Department as a nationally recognized accrediting association. Eventually, Middle States capitulated, issuing a "clarification" to its members that, while diversity was encouraged, it would not be a requirement for accreditation.

MSACHE's "Statement Concerning the Application of Equity and Diversity Principles in the Accreditation Process" was first adopted in 1991, issued in 1993, and revised, after approval by MSACHE's membership, in April 1996. But even in its latest version, it makes an emphasis on representational diversity purely voluntary:

> *Characteristics of Excellence in Higher Education* (i.e., the MSACHE standards for accreditation) does not address the manner in which the principles of equity and diversity should be evaluated in institutional self-study, assessment, and accreditation processes. ... As is its custom, the Commission expects individual institutions to select and determine the methods most suited to gauging their own progress in all areas.
>
> The Commission has developed 'Equity and Diversity in Learning Environments: A Guide for Institutions and Evaluation Team Chairs and Members' for those institutions which include equity and diversity issues within their institutional self-study processes and which seek to evaluate equity and diversity on their campuses.
>
> Self-study reports assess institutional efforts toward improved campus climates for equity and diversity in terms of the institution's own mission, goals and commitment to teaching and learning.
>
> The Commission and its standing committees assess the effectiveness of institutions in achieving all of their goals– including equity and diversity–by seeking demonstrations of congruence

> between their mission statements, planning documents, self-studies, and the findings of evaluation teams.

In short, the pursuit of diversity, racial or otherwise, by MSACHE institutions continues to be purely voluntary, as it has been since the "clarification" was issued in the late 1980s.

"Statement on Diversity," Senior Accrediting Commission, Western Association of Schools and Colleges (1994)

The Senior Accrediting Commission of the Western Association of Schools and Colleges (WASC) experienced its own divisive battle over "diversity" standards.

In 1988, WASC adopted a number of rather vague, weakly worded "diversity" standards. The standards were adopted without much discussion or debate, apparently on the assumption that the standards would be regarded as purely optional, voluntary, and aspirational. A number of member institutions became alarmed after the adoption of the guidelines, when it appeared to them that the standards were meant to be enforced strictly, just as the other guidelines and standards were. This led to the appointment by the WASC Senior Accrediting Commission of an external commission (called the Kelly Commission) to assess the controversy and to recommend ways of dealing with it. In its report to WASC, the commission said:

> Whatever the merits of the diversity standard...the question persists of whether the legitimacy of diversity as a standard for accreditation was established within the academic community through the formal collegial and consultative process before WASC began asserting it with vigor. The long and extensive procedure of circulating drafts, conducting hearings and considering revisions that accompanied the change of standards, 1985-87, for example, was followed in the case of diversity. Yet many institutions did not realize the significance of these changes nor the emphasis that would subsequently be placed on diversity. The concerns have brought the legitimacy of the diversity standard into question.
>
> To be sure, there have also been differences of viewpoint and some dispute regarding many of the other standards and how they should be interpreted and applied. But the standards of academic freedom, general education, library resources, governance, student services, full-time faculty, or finances are all categorically different from diversity in at least one important respect. They represent long-established, reasonably well-understood, time-honored issues relating to the quality and rel-

"...[T]he need for a higher education institution to reflect in its curriculum, student body, faculty, staff, and governing board the ethnic, racial and cultural diversity of society ... is a much newer conception in the academy. Its validity is less self-evident to many, and a broad consensus supporting it has yet to evolve to an extent comparable with the support for more customary standards."
–Kelly Commission, WASC, 1992.

> ability of a collegiate institution. In contrast, the need for a higher education institution to reflect in its curriculum, student body, faculty, staff, and governing board the ethnic, racial and cultural diversity of society–however compelling this may be from the standpoint of public policy– is a much newer concept in the academy. Its validity is less self-evident to many, and a broad consensus supporting it has yet to evolve to an extent comparable with the support for more customary standards.[19]

In response to Kelly Commission's criticisms of its application and enforcement of the 1988 diversity standards, WASC's Senior Accrediting Commission circulated a draft "Statement on Diversity." Although the final version of the document was eventually adopted by WASC, it generated considerable opposition from a number of members, including Stanford University, the California Institute of Technology, a number of denominational colleges, and the California Association of Scholars (a non-voting member of the WASC Senior Accrediting Commission). While these critics did not always share the same reasons for opposing the Statement, there was a consensus on the part of the critics that the diversity standard involved overreaching on the part of the Commission, and that "diversity" could not be treated like the other academic standards evaluated and enforced by the Commission.

The fact that accrediting agencies have had to assure institutions that the diversity standards will not be enforced shows very clearly that "diversity" is not regarded as a standard of excellence in the academy.

In response to these criticisms, the final "Statement on Diversity" that was approved by the Commission included a passage that, like the Middle States standard, makes application of the diversity standard (as opposed to institutional self-study *about* diversity) purely optional.

The final WASC "Statement on Diversity" begins, under the section title "Background," with an excerpt from a letter from Robert Rosenzweig, the then-president of the American Association of Universities, to the WASC Senior Accrediting Commission:

> I think that, at present accreditation has a useful role to play in the movement of education toward greater diversity .... Most institutions, even those with the best-developed approaches to diversity, can profit from an outside look at how they are doing, a look that is not filtered through local lenses clouded either by rosy optimism or by local disputes. That look should be part of every accreditation review, and it should be a part of every self-study, but it should be made clear that it is not a criterion on which approval will be based .... say clearly that it is one purpose of WASC to promote diversity within its region, but that it chooses the route of education, evaluation and constructive advice rather than the route of sanctions.

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[19] Kelly et al. 1992: 42-44.

WASC's own "Statement" then says:

> The Commission agrees with this statement while underlining that thoughtful engagement with all Standards, including those which address diversity, is an obligation of all accredited institutions in the self-study process.[20]

This concession was necessary politically in order for the Senior Accrediting Commission to garner majority support for its diversity statement. From a logical point of view, however, and in terms of the requirements imposed on the accrediting agencies by the U.S. Department of Education, the statement was inconsistent, and therefore incoherent.

In the California Association of Scholars' critique of WASC's "Draft Report on Diversity," the CAS said:

> WASC aspires to be an agent for progressive social change within its region, but proposes to do so in a way that is plainly inconsistent with its defining purpose. WASC has stated that it will use the 'route of education, evaluation and constructive advice rather than the route of sanctions' in order to promote diversity within its region. But this amounts to saying that WASC should adopt a standard which *will not operate as a standard*, and this is a contradiction in terms.[21]

The CAS also pointed out that this contradiction is in violation of the regulations that govern the Secretary of Education's recognition of accrediting agencies (34 CFR §602.17(c)), which requires that "[An agency] bases its decisions regarding the award of accreditation or preaccreditation status upon its published criteria...". In other words, no allowance is made for standards which do not serve as the basis for decisions to accredit or dissacredit. Nor should there be.[22]

The California Association of Scholars is pleased to note that the current WASC *Handbook on Accreditation* (2000) refers to the 1994 "Statement of Diversity" for clarification about how the diversity standards are to be applied, and as we have seen, that statement clearly makes the application (though not the self-study) of diversity issues purely voluntary.

WASC's "Statement on Diversity" amounts to saying that WASC has adopted a standard that will not operate as a standard, and this is a contradiction in terms. It is also in violation of the regulations that govern the Secretary of Education's recognition of accrediting agencies.

The NAS and CAS would prefer, however, to see "diversity" guidelines dropped altogether. The fundamental problem is that representational diversity and in particular the conscious, deliberate use of race as a factor in admissions or faculty selection is not a shared academic value on which an accreditation standard can be based. As a logical matter, the problem cannot be finessed by adopting a diversity standard, and then saying in the same breath that it will not be enforced as a standard. The very fact that accrediting agencies that have adopted diversity standards have had to adopt explicit disavowals that the diversity standards will be enforced in the usual way shows very clearly that "diversity" is not regarded as a standard of excellence in the academy. Furthermore, as we show in detail in Part III, the preferential admissions policies that a number of universities are now having to defend in court are unequivocally and overwhelmingly rejected by the two constituencies that comprise the very core of American higher education–its faculty and students.

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[20] WASC Statement: 1.

[21] California Association of Scholars 1993: 23.

[22] Ibid. 23, fn. 21.

PART III

WHO SPEAKS FOR HIGHER EDUCATION?

SURVEYS OF FACULTY AND STUDENT OPINION ON AFFIRMATIVE ACTION

There is a vast disparity between the views on racial preferences held by university administrations and the higher education establishment, as represented by the American Council on Education (ACE) and its affiliate members at One Dupont Circle, and the views favored by the core constituencies of higher education, the faculty and students. The ACE and its affiliates, and with few exceptions all university administrations at selective institutions, public and private, have claimed in and out of court that there is an overwhelming consensus within the academy in favor of such policies. These claims are unequivocally and demonstrably false.

The American Council on Education and its affiliates at One Dupont Circle, and with few exceptions all university administrations, have claimed in and out of court that there is an overwhelming consensus in higher education in favor of preferential admissions policies as a way of promoting diversity. Such claims are unequivocally and demonstrably false.

The 1975 and 1989 Surveys of Faculty Opinion by the Carnegie Foundation for the Advancement of Teaching

When Bakke was decided in 1978, racial preferences in university admissions policies were a relatively new phenomenon. But even in 1975, the Carnegie Foundation for the Advancement of Teaching found widespread misgivings about such policies in its survey of faculty opinion. The survey found, for example, that 74 percent of faculty either disagreed with reservations or strongly disagreed with the statement "More minority group undergraduates should be admitted here even if it means relaxing normal academic standards of admission." Sixty-nine percent either disagreed with reservations or strongly disagreed with the statement "The only valid measure of equality between different groups in society is not equality of opportunity but equality of group achievement." Seventy-seven percent either disagreed with reservations or strongly disagreed with the statement "Only the members of a minority group have the personal knowledge that is essential for teaching about that group." And 88 percent of the respondents either disagreed with reservations or strongly disagreed with the statement "The normal academic requirements should be relaxed in appointing members of minority groups to the faculty here." When respondents were asked how the university should respond to underrepresentation by women and minorities on the faculty and among their graduate and professional students, roughly 80% favored either (1) making special efforts to find more women and minority candidates, but giving no preference in appointment, or (2) making appointments without any regard to race or sex.[23]

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[23] The Carnegie Foundation for the Advancement of Teaching 1975. Further details about items from the survey dealing with diversity and affirmative action are given in Appendix II of this report.

Unfortunately, fewer items addressing affirmative action and diversity issues have been included in more recent surveys by the Carnegie Foundation. However, the more recent 1989 study provides some evidence that faculty opposition to preferential forms of affirmative discrimination has changed very little in the intervening years. At any rate, that would appear to be the reasonable conclusion to draw from the fact that two of the items that were repeated in the more recent 1989 survey of faculty opinion produced very similar results.

74 percent of the respondents in the 1975 Carnegie Foundation survey disagreed with the statement "More minority group undergraduates should be admitted here even if it means relaxing normal academic standards of admission."

In the 1989 Carnegie study, lengthy questionnaires were mailed to 9,996 faculty at a wide range of colleges and universities nationwide. A total of 5,450 professors returned the questionnaires, representing a completion rate of 54.5 percent.

One item that addressed diversity/affirmative action issues is of particular interest. Respondents were asked whether they "strongly agreed," "agreed with reservations," were "neutral," "disagreed with reservations," or "strongly disagreed" with the following statement:

> *The normal academic requirements should be relaxed in appointing members of minority groups to the faculty at this institution.*

In the 1989 Carnegie study, 92.2% either disagreed to some degree or were neutral on this point.[24]

77 percent of the respondents in the 1975 Carnegie Foundation survey disagreed with the statement "Only the members of a minority group have the personal knowledge that is essential for teaching about that group."

The HERI/UCLA Study of Campus Climate (1989)

In 1989, the Chancellor of UCLA commissioned a study of campus climate by Alexander W. Astin and two of his colleagues at the Higher Education Research Institute (HERI) at UCLA. In Part IV, we discuss in some detail HERI's CIRP nationwide database on American higher education. For the moment, we turn our attention to HERI's findings about the "campus climate" at its own campus. The study found considerable opposition to preferential policies at UCLA. Accordingly, the HERI research team advised the Chancellor to curtail racial and ethnic preferences in admissions as a means of pursuing racial and ethnic diversity on campus.

In the UCLA study, questionnaires and cover letters were mailed in the fall of 1989 to some 9,000 students, 2,000 faculty, and 2,400 staff members. A follow-up mailing was later sent to non-respondents.

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[24] The Carnegie Foundation for the Advancement of Teaching 1989. More data from the 1975 and 1989 Carnegie surveys is provided in Appendix II of this report.

While the UCLA study found broad support for the *idea* of promoting diversity, it also found that a significant percentage of the campus community had misgivings about many aspects of the university's diversity program. Five of the most relevant survey items are given in Table 1, together with the averaged responses for the undergraduates, graduates, staff and faculty on each of the items:[25]

Table 1

From the HERI/UCLA Study of Campus Climate (Astin et al. 1991b)

	Percent agreeing "strongly" or "somewhat"
Diversity is good for UCLA and should be actively promoted by students, staff, faculty and administrators	93.0%
One problem with pursuing the goal of diversity is the admission of too many unprepared students	57.5%
Affirmative action leads to the hiring of less qualified faculty and staff	39.0%
UCLA is placing too much emphasis on diversity at the expense of enhancing its prestige as a top research university	36.0%
Emphasizing diversity leads to campus disunity	27.0%

Respondents were also asked whether they thought the campus climate would be improved if applicants to UCLA were admitted without regard to race or ethnicity. Fifty-eight percent of the undergraduates, 49% of the graduate students, 49% of the staff, and 49% of the faculty thought that it would. In other words, nearly half of the campus respondents, on average, felt that the campus climate would be improved if the university abandoned preferential admissions policies.

While the survey of campus climate at UCLA showed that faculty, students, and staff favored "diversity" in the abstract, it also found that the community was very divided on specific issues. The study found that over 90 percent of the campus community, on average, agreed that "Diversity is good for UCLA and should be actively promoted by students, staff, faculty, and administrators." However, the finding that

Findings that indicate that there is widespread support for diversity tell one very little, for everything depends on how the respondents believe the goal of diversity is to be achieved.

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[25] In computing this average, each of the four population groups has been given equal weight, i.e., the percentages of the responses for each of the four groups were totaled and then divided by four. See Appendix III for a breakdown by group. The UCLA study provided data on the variation in responses to the items according to sex and a number of racial and ethnic categories. That data is not provided here. In general, however, it can be said that whites and Asian Americans were more opposed to affirmative action than any other racial or ethnic group.

there is widespread support for diversity at this level of vagueness and generality tells one very little, for everything depends on how the subjects in the surveys believed that the goal of promoting diversity was to be achieved.

The HERI/UCLA study of campus climate provides strong evidence that the campus community supports efforts to promote diversity where there are no clear winners and losers. It found considerable support for the following kinds of programs: (1) have more events on campus that bring together from different racial and ethnic groups; (2) involve more UCLA students in tutoring Los Angeles inner-city children; (3) have more art exhibits or music festivals featuring different racial/ethnic groups; (4) include more issues of diversity in student orientations; (5) conduct "teach-ins" on diversity issues etc. Such proposals are non-zero-sum game proposals for fostering "diversity." However, the study found a significant dropoff in support for any affirmative action plan that involves preferences, i.e., wherever there are clear winners and losers. It was precisely this distinction that the authors of the UCLA report invoked in the following passage:

> Undergraduate admissions is one issue which clearly divides practically all segments of the UCLA community. There are sharp divisions, for example, within staff, student, and faculty respondent groups as to the desirability of an admissions policy which takes into account the student's race or ethnicity. Very few respondents are neutral on this issue ... Considering how deep the division is on the admissions issue within the UCLA community, we are not optimistic about the prospects for a quick solution to the problem ... Considering the widespread consensus that was reached on so many other critical issues and proposals we feel that it would be a major mistake to focus a disproportionate share of our campus energies on the admissions issue, especially when the same energies can be channeled into constructive and positive action programs more or less immediately.[26]

The CAS / Roper Center Survey of Faculty Opinion on Affirmative Action at the U.C. Campuses (1996)

In 1996 the Roper Center for Public Opinion Research at the University of Connecticut polled faculty at the nine campuses of the University of California about their views on affirmative action. The survey was sponsored by the California Association of Scholars.

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[26] Further details about the HERI/ UCLA campus climate survey are given in Appendix III of the present report.

The CAS / Roper Center survey was the first to use modern, state-of-the-art random telephone survey techniques to approach this question. The survey is also notable for having demonstrated that ambiguity over the term "affirmative action" is a major factor in public opinion research on this question. Once the two main senses of "affirmative action" are distinguished, opposition to the preferential forms of affirmative action–the only kind that is legally controversial– emerges very clearly.

The 1996 Roper Center survey of faculty opinion on affirmative action at the nine U.C. campuses, which was sponsored by the California Association of Scholars, was the first to use modern, state-of-the-art random telephone survey methods.

The study involved a telephone survey of 1,001 faculty members chosen at random from the nine campuses of the University of California. The cooperation rate was over 80 percent, with a margin of error of 3.5%. The survey was conducted when the national debate over California's Prop. 209 (then known as the California Civil Rights Initiative) was underway, and about six months after the adoption by the University of California Board of Regents of resolutions SP-1 and SP-2.

Section 2 of SP-1 said: "Effective January 1, 1997, the University of California shall not use race, religion, sex, color, ethnicity, or national origin as criteria for admission to the University of California or to any program of study." Section 9 of SP-1 said, "Believing California's diversity to be an asset, we adopt this statement: "Because individual members of all of California's diverse races have the intelligence and capacity to succeed at the University of California, this policy will achieve a UC population that reflects this state's diversity through the preparation and empowerment of all students in this state to succeed rather than through a system of artificial preferences."

It is important to keep the Regents' adoption of SP-1 and SP-2 in mind when interpreting the results of this survey, because when the survey was conducted the issue had become entangled with campus politics, and in particular with claims by a well-organized and vociferous faction in the faculty who claimed that the Regents' vote had violated the Regent's own rules about "consulting" the faculty on admissions questions.

Thus, when the survey asked two questions that stuck closely to the actual wording of the Regents' resolutions, rather than to the language of Prop. 209 (CCRI), it found that 52% of faculty favored, and 34% opposed, "using race, religion, sex, color, ethnicity, or national origin as a criterion for admission to U.C." There was similar, but slightly less support, for a related item about faculty employment and contracting that used the same language.

The CAS - Roper Center survey found that a large plurality of faculty at the University of California favor a policy of providing equal opportunity without resorting to racial and gender preferences. The preferred policy is virtually identical with the one adopted by the U.C. Board of Regents June 20, 1995.

On the other hand, the survey also found that a significant plurality of faculty at the University of California favors a policy of providing equal opportunity without resorting to racial and gender preferences. Voting members of the academic senates at U.C. were asked the following question (item 3 of the questionnaire):

> I'd like to read two statements. Please tell me which one best describes the policy you believe the University of California should pursue. First, the University should grant preferences to women and certain racial and ethnic groups in admissions, hiring and promotions. Second, the University should promote equal opportunities in these areas without regard to an individual's race, sex, or ethnicity. Which statement, the first or the second, describes the policy you think the University should pursue?"

The responses were as follows:

Table 2: CAS / Roper Survey

First statement	31%
Second statement	48%
Both	3%
Neither	12%
DK	6%

The survey findings show that little or nothing can be inferred from questions about "affirmative action" unless those questions make very clearly wh the questioner means by the term "affirmative action."

The preferred policy (48% to 31%) is virtually identical with the one adopted by the U.C. Board of Regents.

The importance of the distinction between preferential and non-preferential forms of affirmative action emerged with particular clarity in the fourth item of the survey questionnaire. This question was worded as follows:

> The term 'affirmative action' has different meanings to different people. I'm going to read two definitions of the term 'affirmative action.' Please tell me which one best describes what you mean by the term. First, affirmative action means granting preferences to women and certain racial and ethnic groups. Second, affirmative action means promoting equal opportunities for all individuals without regard to their race, sex, or ethnicity. Which statement, the first or the second, comes closest to your own definition of affirmative action?

The responses were as follows:

First statement	37%
Second statement	43%
Both	2%
Neither	14%
DK	4%

The responses to this question show very clearly that little or nothing can be inferred from questions about "affirmative action," unless those questions specify what the questioner means by the term "affirmative action." Once the necessary distinctions are drawn, it is easy to discern how faculty stand on the issue. U.C. faculty clearly favored a policy that is virtually identical with the resolutions passed by the U.C. Board of Regents in June 20, 1995, and with Prop. 209, which was passed by the voters of the state of California by an eight point margin (54-46 percent) on November 5, 1996.[27]

The 1996 Roper Center national survey of faculty opinion on affirmative action, which was sponsored by the National Association of Scholars, found that 64 percent of the nation's professors approved of a policy which stated that their institutions "shall not discriminate against, or grant preferential treatment to, candidates in faculty employment decisions on the basis of their race, sex, or ethnicity."

The NAS / Roper Center Nationwide Survey of Faculty Opinion on Affirmative Action (1996)

The Roper Center for Public Opinion Research at the University of Connecticut conducted a nationwide survey of faculty opinion on affirmative action in mid-October 1996. The survey, which was sponsored by the National Association of Scholars, used the same state-of-the-art, random telephone survey methodology that was used in the earlier survey by the California Association of Scholars (one of the NAS' state affiliates). The survey, which questioned 800 faculty at public and private four-year colleges, used a representative sample of faculty and institutions.

The findings from the NAS / Roper Center survey are even more interesting than the CAS' findings. For one thing, the CAS survey looked only at the nine campuses of the University of California, whereas the NAS survey covered a representative sample of private and public four-year institutions nationwide. Secondly, the findings were less likely to have been contaminated or confounded by purely internal political controversies generated by the Regents' resolutions at U.C. and the campaign for and against Prop. 209. As a result, the NAS' Roper Center survey of October 1996 remains the best research data we have to date on faculty opinion about affirmative action.

The survey produced the following findings:

- 60 percent of professors felt their institutions "should not grant preference to one candidate over another in faculty employment decisions on the basis of race, sex, or ethnicity." Only 29 percent supported such preferences.
- 56 percent felt that their institutions "should not grant preference to one applicant over another for admission on the

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[27] Further details about the CAS / Roper Center survey are provided in Appendix IV of this report.

basis of race, sex, or ethnicity." Only 32 percent supported such preferences.

- 64 percent of the nation's professors supported a policy stating that their institution "shall not discriminate against, or grant preferential treatment to, candidates in faculty employment decisions on the basis of their race, sex, or ethnicity." When the same phrase applied to "applicants for admission," 61 percent agreed.

- Despite the overwhelming opposition of faculty members to the use of racial and sexual preferences, more than 8 in 10 faculty members claiming familiarity with their institution's faculty employment practices reported that such preferences are being utilized at their institutions. Six in 10 claiming familiarity with student admission practices report the use of such preferences in admission decisions.

The president of the NAS, Stephen H. Balch, stressed the disparity between these findings and the publicly stated opposition of many university administrators in California and in other states to California's Prop. 209. "The leaders of the higher education establishment would have us believe that racial and sexual preferences enjoy intense, widespread support throughout academia," Balch said. "Yet these findings make it clear that the college and university presidents who rushed to denounce CCRI are out of touch with or simply are not accurately representing the faculty of their institutions."[28]

The Zogby/FAST nationwide survey of student opinion shows conclusively that the other principal constituency of the university–the students–are strongly opposed to the preferential policies that university administrations are employing on their campuses and defending in court.

The Zogby/FAST Student Life Survey (2000)

Zogby International conducted a Student Life Survey for the Foundation for Academic Standards and Tradition (FAST) from January 8 to January 22, 2000. The survey consisted of phone interviews regarding student life with 1,005 college students nationwide who were selected at random. The margin of error was was +/- 3.2%.

The survey was designed to assess students' beliefs, attitudes, and opinions both about themselves and about their life at college. Zogby asked 1,005 students a series of 48 questions about their college experiences and about their habits, their ethics, their schools, and their country.

The student sample was 59.3% female and 40.7% male. Three-quarters were registered to vote. They were divided evenly among Democrats, Republicans and independents, and those who were enrolled in minor parties. The political breakdown was as follows: moderates, 43.0%; conservatives, 21.3%; very conservative, 1.9%; liberals, 21.8%, and the very liberal, 6.8%.

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[28] Additional details and the NAS' executive summary of the survey findings are provided in Appendix V of this report.

The survey included a number of questions about race and ethnicity, affirmative action, and preferences that are of great interest. The responses to these items show conclusively that students–the other principal constituency of the university– are strongly opposed to the preferential policies that university administrations are employing on their campuses.

77 percent of students are opposed to racially preferential admissions policies.

A collation of the principal findings of the survey on the subject of diversity, affirmative action, and "fairness" is provided in Appendix VI of the present report. Here are some of them:

> Fully 95.7% of the respondents said that diversity of ideas and high academic standards are more important to a quality education than achieving ethnic diversity. Only 2.9% said achieving ethnic diversity is most important to a quality education.
>
> When students were asked which is more important in admission decisions– fairness in meeting academic standards or achieving ethnic diversity– 86.4% said fairness.
>
> When asked flat out whether minorities should get preferences in admissions, 77.3% said no. When asked whether it is unfair to lower the entrance requirements for some students, regardless of the reason, 78.9% said yes. When asked whether it is right to give preferential treatment to minorities, even if it means denying admissions to other qualified applicants, 77.9% said no.
>
> By a 9-to-1 margin, students reject the proposition that blacks and Hispanics should get preference in admissions over Asian-Americans, who are sometimes considered to be overrepresented on campuses because they do so well academically.
>
> More than two-thirds of the students (69.6%) oppose the proposition that some individuals and minorities, because they were denied access to higher education in the past, should receive preference over white men in admissions now. Of the 69.6% who said no, 38.8% said no strongly, while 27.4% said yes, 8.4% said yes strongly.
>
> The proposition drew notably different responses depending on the ethnic group. Whites said no, 74.5% to 22.2%, and Asian-Americans said no, 62.5% to 37.5%. On the other hand, blacks

Black students are about evenly divided (51.9% to 46.7%) on whether "schools should give minorities preference in the admissions process."

said yes, 61.5% to 37.5%, and Hispanics said yes, 57.1% to 40%.

Allowing that the minority sample is small (18.6%), at least two-thirds of African-Americans agreed with the majority that fairness and standards should prevail over ethnic diversity in admissions. However, on the proposition that "schools should give minorities preference in the admissions process," blacks are divided, agreeing 51.9% to 46.7%.

Forty-one per cent said there is too much talk about race and ethnicity on campus, but 46.6% said there is not enough. That issue, however, produced marked differences between, among others, men (too much) and women (not enough), and specialized college students (too much) and liberal arts college students (not enough).

Only 6.9% of all students said they would describe as racist an organization that believes that using preferences in admissions is not the best way to help minorities get a better education because it masks deeper problems in K-12 education.

The surveys of faculty opinion raise troubling questions about the extent to which internal governance mechanisms within the university have failed – rather dramatically – to accurately reflec faculty opinion on one of the most important public policy issues of our time.

The Connecticut Association of Scholars / CSRA survey of faculty opinion (2000)

A survey sponsored last year by the Connecticut Association of Scholars (an affiliate of the National Association of Scholars) strongly confirms the findings of the earlier surveys of faculty opinion in California by the California Association of Scholars and of faculty opinion nationwide by the National Association of Scholars. The Connecticut survey is of great interest for another reason as well: the reaction to the survey's findings by Fred Maryanski, Interim Chancellor of the University of Connecticut, and a group of student and faculty activists there. Their responses show how far political correctness on the subject of affirmative action has chilled free speech and inquiry on America's campuses.

The Connecticut study was conducted by the Center for Survey Research and Analysis at the University of Connecticut, Storrs. The poll, which was conducted from March 28 to April 7, was based on phone interviews with a total of 1,341 faculty members at the Connecticut State University system, the University of Connecticut, and the Connecticut community colleges (all public institutions). The margin of error ranged from 1.9 percent to 2.9 percent, depending on the institution.

The survey asked two questions. One was: "Do you feel that [name of institution] should or should not grant preference to one applicant over another in faculty employment decisions on the basis of race, sex, or ethnicity?" The second question, phrased the same way, concerned student admissions.

The survey revealed overwhelming opposition to racial preferences in admissions and in faculty hiring and employment. In faculty hiring, professors in the Connecticut State University system rejected preferences by 61 percent to 18 percent (with the remainder undecided or not responding); University of Connecticut faculty did so by 52 percent to 29 percent, and community college faculty did so by 75 percent to 15 percent. In student admissions, CSU faculty rejected preferences by 58 percent to 23 percent, University of Connecticut faculty did so by 47 percent to 35 percent, and community college faculty did so by 73 percent to 9 percent.

Even before the poll was completed, several professors at the University of Connecticut denounced the survey on the grounds that its methodology was "flawed," and that the questions were "misleading," "ambiguous," and "loaded." One faculty member even denounced the poll for "forcing a choice and not allowing for an alternative response." Others complained that the poll "left many faculty feeling that they were duped." Even worse, several professors affiliated with the University's Puerto Rican / Latino Cultural Center demanded an investigation of the University's own Center for Survey Research and Analysis (formerly the Roper Center).

Any university administration that took its responsibility to maintain intellectual standards and integrity would have dismissed these charges and demands with contempt. Instead, Fred Maryanski, Interim Chancellor of the University of Connecticut, agreed to the agitators' demands and created a task force to examine how CSRA "conducts research for external organizations."

This action by the Interim Chancellor was absolutely extraordinary.

The word "preferences" is a perfectly ordinary word of the English language. It is hard to believe that the meaning of this perfectly ordinary word needs to be explained to faculty members and chancellors, but in case we are mistaken about this, here it is: To "prefer" on ground X simply means to treat X as a plus factor in the consideration of candidates or applicants. Race is used as a "preference" in this obvious sense in every university admissions policy that has been, or is currently, being litigated. Furthermore, "preferences" is the term to describe these constitutionally suspect affirmative action programs in the *law*, both in higher education and elsewhere.

The charge that this term is "loaded," "misleading," or "ambiguous" is absurd. Indeed, post-209 public opinion surveys by the Field Poll in

California have shown that voters understood the meaning, implications, and effect of Prop. 209 (which used virtually identical language) perfectly well.

The protestors at the University of Connecticut could not have failed to understand any of this. So what the protestors really meant by the terms "loaded," "misleading," and "ambiguous" is that these questions produced findings they didn't like and that proved to be politically embarrassing to them. In short, the protestors demagogued the survey. Even worse, the University of Connecticut capitulated to their demagoguery. If anything, Maryanski should have investigated the academic and intellectual bona fides of the *protestors*. Instead, he chose to investigate the Center for Survey Research and Analysis, one of the leading public opinion survey research centers in the United States.

The Chancellor's irresponsible action in establishing his task force is rendered even more outrageous by the fact that CSRA does polling for many external organizations, as do the nation's other leading survey research organizations, including those that are affiliated with universities. Indeed, CSRA has done polling for liberal organizations in the past, including the Media Studies Center and the First Amendment Center. One searches in vain in the record for any protests against any previous poll. Simply put, therefore, advocates of racial preferences at the University of Connecticut apparently believe that the University cannot tolerate the scientific sampling of faculty opinion on racial preferences, even by a duly constituted agency of the university. Their real objective—and the real objective of their like-minded colleagues at other universities—is to simply silence those who disagree with them.

For twenty years or more, no one has been appointed to any administrative position of importance in the university who has not been prepared to publicly endorse race- and gender-based preferential policies, or at least to remain silent about any reservations or doubts he or she may have had about them.

SOME TROUBLING QUESTIONS ABOUT UNIVERSITY GOVERNANCE

It is startling to compare the findings from the foregoing surveys of faculty and student opinion with official policy statements on affirmative action by university administrators and the higher education establishment at One Dupont Circle. The divergences, which are very stark, raise troubling questions about university governance. It is clear that internal governance mechanisms within the academy have failed rather dramatically to accurately reflect faculty and student opinion on one of the most important public policy issues of our time. If one had only the official statements administrators and higher education organizations to go by, no impartial observer would have any reason to suspect that an overwhelming majority of faculty and students in the United States actually favors the abolition of racial and gender preferences.

To our knowledge, none of the official bodies or self-appointed spokespersons for the professoriate and for the students they serve has ever shown any interest in ascertaining in a scientific manner the views of the faculty and students for whom they claim to speak. Nor is this just a matter of a demonstrated lack of interest in finding new evidence. It extends to ignorance about, or indifference to, the research evidence that has been available for some time, beginning with the Carnegie Foundation surveys in 1975.

It is likely that the disparity between faculty and student opinion and official statements simply confirms what is commonplace for students of organizational behavior: that any organization or institution can be effectively controlled by ten percent of its members, provided they are sufficiently determined and well-organized. For twenty years or more, no one has been appointed to any administrative position of importance in American higher education who has not been prepared to publicly endorse race- and gender-based preferential policies, or at least to remain silent about any reservations or doubts he or she may have had about them. As a result of this history, there is presently in the University a large affirmative action apparat with an enormous amount of power. And while faculty senates pass resolutions which purport to represent the views of the entire faculty, the meetings of the senates are usually sparsely attended, and often only by those whose strong interest in the outcomes make them unrepresentative of the university community as a whole.

The faculty needs fewer change agents dedicated to telling their colleagues what they ought to think on controversial matters of public policy, and more who simply wish to accurately reflect, articulate, and represent their views. Today, however, after their long march through the institutions, all the important bastions of power within the university have been captured by those who advocate preferences based on race, sex, and ethnicity. In this climate, there has been an abject failure on the part of the university to accurately reflect faculty opinion. This makes faculty with different views reluctant to speak out.

The Zogby/FAST surveys of student opinion and the surveys of faculty opinion that have been pioneered by the National Association of Scholars and its state affiliates have demonstrated that modern polling techniques can be used to determine faculty opinion accurately and relatively cheaply. For too long, the academy has had as its most publicly visible spokespersons those whose claim to represent faculty opinion fairly and accurately has always been questionable. Their days may soon be over.

PART IV

IS CAMPUS RACIAL DIVERSITY CORRELATED WITH EDUCATIONAL BENEFITS?

TESTING THE POWELL RATIONALE EMPIRICALLY

The legal case for Powell's diversity rationale requires more than a bare assertion of First Amendment rights. As universities themselves have come to acknowledge, it must at the very least be supported by empirical evidence that racially diverse student bodies confer educational benefits.

Viewed as an empirical claim, the Powell diversity rationale asserts that, holding all other variables constant, students benefit by attending racially diverse colleges. Testing the hypothesis is contingent on the availability of a sufficiently ample and well-designed database. Given such a database, there is a well-established, standard statistical methodology for testing hypotheses like the Powell diversity rationale, called multivariate regression analysis.

Viewed as an empirical claim, the Powell rationale asserts that, holding all other variables constant, students benefit by attending racially diverse colleges.

Testing the Powell hypothesis empirically places significant demands on a database, but as it turns out, there is a database that satisfies those conditions. To its credit, the American Council on Education (ACE), America's largest and most influential higher education organization, started the Cooperative Institutional Research Program in 1966 to construct a higher education database that would be able to answer these kinds of questions.

There is enough racial diversity across institutions in the ACE-HERI-CIRP database to test whether students benefit from campus racial diversity. The standard methodology for doing this is multivariate regression analysis.

The ACE is in fact more than an organization; it is, rather, an umbrella group or consortium of organizations with an interest and stake in higher education. Its membership consists of virtually all of the important higher education organizations in the country. The ACE headquarters at One Dupont Circle in Washington, D.C. has become a synonym for the higher education establishment in the United States.

The ACE lists the following as some of its major activities:

- Represents higher and adult education before Congress, federal agencies, the Supreme Court, and the federal courts.
- Conducts research and analyzes data on U.S. higher and adult education.
- Helps shape international education policy at the federal level and works with the national campuses and higher education groups to promote international education.
- Provides opportunities for the exchange of mutual concerns among leading corporate and higher education chief executives.

- Advises colleges and universities in such areas as minority and women's issues; management and leadership, and self-regulation.

- Assists adult learners by administering the General Educational Development (GED) tests and by reviewing and making credit recommendations for learning acquired through courses, programs, and training offered by businesses, labor unions, associations, and the military.

- Publishes news and information through a semimonthly newsletter, Higher Education & National Affairs; a triannual magazine, The Presidency; professional books and guides released through the ACE/Oryx Series on Higher Education; and numerous reports and periodicals.[29]

The activity mentioned in the first bullet item– "representing" or lobbying for higher and adult education before Congress, federal agencies, the Supreme Court, and the federal courts– is the special responsibility of the Higher Education Secretariat of ACE. The Secretariat was formed on October 5, 1962 to serve as a forum for the chief executive officers in the higher education association community. At present, the Secretariat is composed of 47 national higher education associations, representing the different sectors and functions in postsecondary institutions. The American Council on Education is the coordinating and convening body for the Secretariat. ACE provides a forum for the Secretariat's discussion on education issues of national and local importance. The Secretariat is the chief lobbying arm of the higher education establishment at both the federal and state levels.

The American Council on Education (ACE) is much more than an organization; it is, rather, an umbrella group or consortium of organizations with an interest and stake in higher education. The ACE headquarters at One Dupont Circle in Washington, D.C. has become a synonym for the higher education establishment in the United States.

The Cooperative Institutional Research Program (CIRP) was founded by ACE in 1966 under Alexander W. Astin, its director of research at the time. Here is how the abstract of the first ACE Research Report on CIRP described the goals of the program:

> In order to assess the impact of different college environments on student development and to provide a source of current, readily available information about college students, the American Council on Education (ACE) has undertaken a large-scale program of longitudinal research on the higher educational system. The program will be based primarily on a comprehensive file of information from a representative sample of higher education institutions which will be updated annually. ACE's research data file is designed to incorporate the best features of a data base (descriptive information that will eventually become out-

The Cooperative Institutional Research Program (CIRP) was founded by ACE in 1966 under Alexander W. Astin, its director of research at the time.

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[29] http://www.acenet.edu/About/Membership/how.html. See also American Council on Education 1953.

> moded) and a data registry (information that is stored for future use). It will include longitudinal records on students, with special emphasis on student development, and 4 categories of institutional data: finances and financial policies, curriculum, administrative policies and practices, and faculty. The research data file is designed to serve 3 basic functions: research, information, and training, and will possibly be used by other educational organizations and individuals as a research tool.

When the Bakke case was decided in 1978, CIRP had been in operation for twelve years. In 1977, one year before the Bakke decision, Alexander Astin published the first comprehensive report of the CIRP findings (Astin 1977). At that point, however, CIRP was not in a position to test the Powell diversity hypothesis using multivariate regression analysis, because at that point in time information about the racial diversity of the student bodies had not been incorporated into the database.

This changed in the mid- to late-1980s, when Astin began merging this kind of data, which is available from the U.S. Department of Education's Integrated Postsecondary Data System (IPEDS), along with much other useful information, into the CIRP database.

What Matters in College?: Four Critical Years Revisited (Astin 1993c) was the first, and remains the only, detailed report of the findings from this new, more comprehensive database. Here is how Astin describes the ACE/HERI/CIRP database in his 1993 work:

> CIRP was initiated at the American Council on Education (ACE) in 1966; since 1973 it has been conducted by the Higher Education Research Institute at the University of California, Los Angeles, with continuing sponsorship by ACE. It is now the largest ongoing study of the American higher education system, with longitudinal data covering some 500,000 students and a national sample of more than 1,300 institutions of all types. These data cover a wide range of cognitive and affective student outcomes, affording the opportunity to examine how the college experience affects more than eighty different measures of attitudes, values, behavior, learning, achievement, career development, and satisfaction. The size and scope of CIRP make it possible to employ highly sophisticated multivariate controls over a large number of potentially biasing variables– in particular, the characteristics of the entering students that might predispose them to pick particular types of colleges or programs.[30]

Since 1973 CIRP has been conducted by the Higher Education Research Institute (HERI) at UCLA, with continuing sponsorship by ACE. It is now the largest ongoing study of the American higher education system, with longitudinal data covering some 500,000 students and a national sample of more than 1,300 institutions of all types.

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[30] Astin 1993c: 4.

> "The Cooperative Institutional Research Program (CIRP), which has been in progress for nearly a quarter of a century and which now includes input data on nearly 8,000,000 students and 1,300 institutions, was initiated in 1966 specifically to collect input data that would make it possible to apply the [input-environment-output] model to a national study of student outcomes in American higher education. .... it is an omnibus instrument that includes demographic and other background data as well as pretests and self-predictions ... on a wide variety of college outcomes ...."[31]

"The size and scope of CIRP make it possible to employ highly sophisticated multivariate controls over a large number of potentially biasing variables."
–Astin 1993c

THE ACE-HERI-CIRP 1985-89 LONGITUDINAL UNDERGRADUATE STUDY

Astin's *What Matters in College?* reports on the findings of the ACE-HERI-CIRP 1985-89 longitudinal undergraduate study. This study used institutional data from HERI's own Registrars Survey and from the U.S. Department of Education's Integrated Postsecondary Data System (IPEDS). The latter database includes enrollment figures by institution for African American, Asian-American, Latino, and white undergraduate students. It also includes data about institutional finances, degrees earned, faculty salaries, whether the institution is a public or private one, and institutional type (denominational, research university etc.).

The Educational Testing Service (ETS) provided student scores on the SAT, GRE, and NTE (National Teacher Examination). The American College Testing Program, the Association of Medical Colleges, and the Law School Admissions Council provided student test scores on the ACT, MCAT, and LSAT.

"Three percentage measures are included in the regressions to assess possible effects of the racial composition of the peer group: African-Americans, Asians, and Latinos. With few exceptions, outcomes are generally not affected by these peer measures, and in all but one case the effects are very weak and indirect."
– Astin 1993c

Finally, HERI used data provided by the 1989 HERI faculty survey and HERI student surveys. The HERI faculty survey surveyed teaching faculty at 217 of the 309 four-year institutions that were involved in the 1985-89 student survey.[32] The student surveys consisted of the HERI Student Information Form (SIF) for entering students and the 1989 Follow-Up Survey (FUS). The FUS was sent to the 309 SIF institutions in 1989-90. The Exxon Education Foundation and the National Science Foundation (NSF) provided HERI with grants for a weighted follow-up sample from 159 of these institutions. The sample was divided into 26 stratification cells for the purposes of data analysis.

There were 309 four-year institutions and 24,847 students in the database for the 1985-89 longitudinal undergraduate study. The database included 131 student input variables and 135 institutional environmental variables, for a total of 266 control variables. The database included a total of 192 environmental variables–the 135 institutional environmental variables (called "bridge" variables) and 57 intermediate outcome or student involvement variables.[33, 34]

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[31] Astin 1993a: 64.

[32] According to Astin, the HERI sample of faculty respondents is comparable with the population of the faculty survey conducted by the National Center for Education Statistics (1990).

Eighty-two cognitive and noncognitive student outcome variables were used in the study. The study had pretests for 44, or roughly half, of these outcome variables.[35]

Controlling for all possibly relevant control variables is critical to multivariate statistical analysis, as Astin points out.[36] Fortunately, one of the great strengths of the ACE-HERI-CIRP database is the size of the samples and the large number of control variables used. There is no systematic, detailed presentation of all the CIRP variables in Astin 1993c (nor in any of the other HERI-CIRP literature we have seen). However, a rough idea of the student input variables and environmental variables (institutional and student intermediate outcome variables) can be gleaned from the exposition of the findings in Astin 1993c.

The 131 student input variables include 44 pretest measures (from the SIF or Student Information Form), 26 self-predictions, and 61 other input characteristics, including the types of courses taken in high school, preliminary choice of career, the importance given to eleven reasons for going to college, religious preference, parental occupation, parental income, parental education, student race or ethnicity, age, gender, marital status, and citizenship.[37]

The 135 environmental measures include 16 measures of institutional characteristics, 15 measures of curricular requirements, 35 measures of the student's peer environment, 34 measures of the faculty environment, and 35 measures of the freshman's place of residence, financial aid, and choice of major.[38]

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[33] There is a discussion of the "bridge" variables at Astin 1993c: 32-70.
[34] There is a brief discussion of the environmental variables, including the "intermediate student outcome" or "student involvement" variables, in Astin 1993c: 365; and a more extensive discussion in Astin's work on statistical methodology (Astin 1993a: 303-308).
[35] Astin 1993c: 14.
[36] (1993c: xxiii-xxiv).
[37] Astin 1993c: 15.
[38] Astin 1993c: 76-77, 81.

THE CRUCIAL TEST

Since the racial diversity of the student bodies in the CIRP database varies from institution to institution, it is possible to use the database to test the Powell rationale empirically using multivariate regression analysis. If the regression coefficient for racial diversity is statistically significant in a model that controls for all explanatory variables, one can say that racial diversity is associated with certain outcomes and is plausibly a cause of these outcomes. If an explanatory variable loses significance when other variables are added to the model, this explanatory variable is said to be an indirect cause of the outcome.

Astin reported the findings for the crucial regressions on p. 362 of Astin 1993c. Here is his own description of the findings:

> Three percentage measures are included in the regressions to assess possible effects of the racial composition of the peer group: African-Americans, Asian-Americans, and Latinos. With few exceptions, outcomes are generally not affected by these peer measures, and in all but one case the effects are very weak and indirect. Perhaps the most interesting finding is the negative effect of the percentage of Latino students on attainment of the bachelor's degree. This finding is reminiscent of earlier research ... indicating that Chicanos, in particular, are relatively likely to drop out of high school and college, even after controlling for their academic preparation and other background factors. One possibility is that this measure, the percentage of Latino students in the student body, may well be a crude proxy ... for the overall dropout rate of the institution
>
> The only other direct effect is the negative effect of the percentage of Asian-American students on the perception of a Student Oriented Faculty (Beta = -.21). Otherwise, none of these three measures produces any direct effects, and practically all of the indirect effects are very weak.

The California Association of Scholars (CAS) drew attention to this passage in 1993, when it joined a number of member institutions of the Western Association of Schools and Colleges (WASC), including Stanford University, Cal Tech, and a number of denominational colleges, in challenging WASC's "Statement on Diversity." The WASC Statement included the claim that racial diversity is an important element of educational quality and excellence. When challenged on this point, the WASC Senior Commission invoked Astin's work. The CAS was apparently the first to note that the crucial test, which was reported in Astin 1993c: 362, actually disconfirmed the claim that campus racial diversity is correlated with educational excellence.

If campus racial diversity enhanced educational quality, one would expect it to have a positive, measurable effect on at least **some** *outcome variables. The HERI-CIRP study found however, that the racial composition of the peer group had only two direct effects out of a total of 82 outcome variables, both of which were negative.*

Since the California Association of Scholars was apparently the first to draw attention to the importance of the CIRP database to the current national debate over racial preferences in university admissions, we will take the liberty of quoting the relevant passage in full from the CAS' critique of WASC's "Statement on Diversity":

> ["What Matters In College?"] ... does not support the claim that ethnic and racial diversity in the peer group enhances educational quality. If this were true, then one would expect that having diverse student bodies would have a positive, measurable effect on at least *some* outcome variables. The HERI-CIRP study found, however, that the racial composition of the peer group had only two direct effects out of a total of 82 outcome variables that were studied, and both of these were negative (ibid., p. 362). ...
>
> We are struck by the fact that the study found no correlation between racial diversity in the student body on any of 82 cognitive and non-cognitive outcome variables, and that it actually found, in effect, a *negative* correlation between gender diversity in the peer group and some of the outcome measures. These findings are directly relevant to the most controversial aspect of the current debate over multiculturalism and diversity within the academy– i.e., the insistence on the part of many of the proponents of "diversity" that the university apply race and sex-based preferences in student admissions and promotions, rather than equal opportunity policies requiring that students be admitted and faculty be hired and promoted without regard to the criteria of race, sex and ethnicity. In order to justify a diversity standard for accreditation which would justify the use of such preferences, diversity proponents are obliged to provide empirical evidence showing that diversity is a prerequisite of educational excellence. In our opinion, the HERI-CIRP does not justify this contention. In a number of crucial areas, the study fails to provide the expected evidence that diversity and excellence are positively correlated, and in some areas it actually provides evidence that they may be negatively correlated.[39]

"As it turns out, none of these three measures– considered independently– produced many direct effects on student outcomes. The CAS has seized on these negative findings as a means of refuting the claim ... that having a racially diverse student body "enriches" the student's educational experience."
– Astin 1993c

MITCHELL J. CHANG'S 1996 DOCTORAL DISSERTATION

The CAS' critique of WASC's "Statement on Diversity" created a stir inside WASC, but did not elicit a response from Astin himself (at least not publicly). We were, therefore, surprised to learn this year from a National Association of Scholars member who belongs to another state affiliate that Astin had responded seven years previously to our criticisms.

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[39] California Association of Scholars 1993: 30

Our 1993 critique of the WASC statement referred to the 1991 ACE/Macmillan edition of *What Matters in College?*. In 1993, but apparently after the CAS' critique had been written and distributed, Jossey Bass published the paperback edition of *What Matters in College?* On reading the introduction to the paperback edition of Astin's book recently, we were startled to find the following passage:

It is astonishing that Astin has characterized this finding as a "minor" one. Since this is the crucial test for the diversity rationale in multivariate regression analysis, his statement raises the question whether Astin has confidence in his own methodology and database.

> Since the book was first released I have also had two rather sobering experiences concerning the use of these research findings by politicians and by our judicial system. The first of these concerns the current debate over "diversity" and "multiculturalism" on the campus. Within the academy, these attacks have been led by a group that calls itself the National Association of Scholars and, in my own state, by an affiliate called the California Association of Scholars (CAS). While the research findings concerning the effects of multiculturalism are clear– students benefit in a variety of ways when their campus emphasizes multiculturalism in its curriculum and cocurriculum– the CAS has chosen to ignore (or dismiss) these findings in its public pronouncements and to focus instead *on a minor finding concerning racial enrollments* [emphasis ours]. ... When we originally devised the 135 environmental measures for this study, we included three simple measures of racial enrollments: the percentages of African Americans, Asian-Americans, and Latinos in the student body. As it turns out, none of these three measures– considered independently– produced many direct effects on student outcomes. The CAS has seized on these negative findings as a means of refuting the claim– typically advanced by proponents of affirmative action– that having a racially diverse student body "enriches" the student's educational experience. The federal courts in the Hopwood case recently reached the same negative conclusion as the one propounded by the CAS in their decision to outlaw racial consideration in admission to the University of Texas Law School.
>
> That these measures do not necessarily reflect "diversity" is easily illustrated by considering the percentage of African-American students in the student body. Using this measure, we would have to conclude that the historically black colleges are the "most diverse" institutions, when in fact their student bodies are among the *least* diverse; that is, more than 90 percent of their students are the same racial group! Under these circumstances, it is clearly not reasonable to claim that this study proves that diversity has no consequences for student development.

> To explore the issue more directly, Mitchell Chang from our institute recently developed a comprehensive measure of student body diversity as part of his doctoral dissertation. ... Under Chang's definition, the most diverse student body would be one with equal representation of students from different racial groups, while the least diverse student body would comprise mostly students from one group. Chang found that white students who attend institutions with diverse student bodies, compared with those who attend institutions enrolling mostly white students, are more likely to discuss racial issues and to socialize with nonwhite students. Since these latter two student experiences are, in turn, associated with a number of positive educational outcomes ... it seems clear that diversity can indeed have beneficial effects on student development. It will be interesting to see how the CAS deals with Chang's findings once they are published.[40]

Astin has challenged us to respond to Chang's findings. We are happy to do so here.

It is astonishing that Astin has characterized the results of the regression tests on the racial diversity variable in his study as "minor." Since this is the crucial test in multivariate regression analysis for the diversity rationale, his statement makes one wonder whether Astin himself has confidence in his own methodology and database.

Astin's assertion that Chang found something important that his analysis had simply overlooked is based on two claims. The first is that Chang constructed more precise measures of campus racial diversity that led him to different conclusions. The second is that Chang found that campus racial diversity is correlated with two variables that are correlated in turn with student outcomes.

The first claim is bizarre. Chang 1996 does in fact elaborate three different measures of campus diversity, but the measures do not appear to have led to different findings about the impact of campus racial diversity from those described in Astin 1993: 362. Indeed, we are unable to find any passage in Chang 1996 where he claims otherwise.

The second claim does nothing to blunt the force of the fundamental finding of Astin 1993: 362. We note, first of all, that in his introduction to the paperback edition of *What Matters in College?*, Astin cites the finding that white students are more likely to discuss racial issues and to socialize with nonwhite students. But Chang also found, though Astin fails to report, that black students are *less* likely to discuss racial issues or socialize with students of another race on campuses that are more racially diverse.

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[40] Astin 1993c: xvi-xvii.

But this is a relatively minor point. The more important point is that in Astin 1993, these two measures are considered, as surely they must be, as intermediate outcome variables rather than final outcome variables. In short, Chang's new finding comes from treating two of the variables that Astin considered (rightly) as intermediate outcome variables as final outcome variables. So far as the diversity rationale is concerned, the correlation between the SOCIALIZATION and DISCUSSION variables in the CIRP database and final student outcomes are of interest only to the extent that there is a positive synergy or interaction (called an "interaction effect" by statisticians) between the racial diversity of the student body, the SOCIALIZATION and DISCUSSION variables, and final outcomes.[41] But neither Chang nor Astin reports these interaction effects, though as we show below on the basis of indirect evidence, these interaction effects are likely to be very weak.

Chang's Diversity Measures: Much Ado About Nothing

Although we are unable to find any passages in Chang 1996 where he claims that the use of his diversity measures leads to results different from Astin's finding that the racial composition of the peer group had either weak or non-existent effects on student outcomes, Chang does try to make it sound as if the "racial homogeneity" of most of the institutions in his sample makes statistical analysis difficult– a claim that was repeated, as we have seen, by Astin in his introduction to the 1993 paperback edition of *What Matters in College?* Here is what Chang says:

> "[Table 4.2] clearly indicates the lack of racial diversity in the sample, and by extension in our institutions of higher education. ... Approximately twenty percent of the institutions in the sample have student populations that are almost entirely composed of one racial group. For half of the institutions, over ninety percent of their student body are of the same racial group. Conversely, only about twelve percent of the sample have less than seventy-five percent of one racial group in their student body. Moreover, of all the institutions, only two percent (8 institutions) have fewer than fifty-five percent of the same racial group. In short, the sample of institutions–much like the U.S. population in general–is skewed toward the side of racial homogeneity. Only a very

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[41] What we have called the SOCIALIZATION and DISCUSSION variables come from the following two items from the 1989 Follow-Up Survey (Wingard et al. 206):

"For the activities listed below, please indicate how often - Frequently, Occasionally, or Not at all - you engaged in each during the past year:

"Discussed racial/ethnic issues"
"Socialized with someone of another racial/ethnic group"

> s skewed toward the side of racial homogeneity. Only a very small percentage of institutions even remotely resemble a diverse campus as defined by this study–namely an equal opportunity for cross-racial interaction for all students. Clearly, such opportunities are limited at nearly ninety percent of the institutions in the sample.[42]

Note that in order for a college to be diverse by Chang's measure, it must give every student, regardless of race, "an equal opportunity to establish cross racial relationships." This means that if there are 5 different races attending a school, in order to get a perfect score on Chang's measure each race would have to comprise 20 percent of the school's students. This would be the mix in Chang's multiracial, multicultural utopia, but it is far from the reality on American campuses. Nor do the demographics of present-day universities pose any problems for statistical analysis.

First of all, the schools in Chang's sample are more white than the general population, but not to the extent that Chang's description would have us believe, as can be seen by comparing his numbers with the data on the 18-24 year old population of the US in 1990.[43] In Chang's sample the median institution had about 90 percent white students. The 18 to 24 year old U.S. population as a whole in 1990 was 70.5 percent white. Since Chang excluded historically black colleges from his sample, this is not too surprising.[44] From Chang's table it appears that 11.6 percent of his sample has 75% or less white students. Another 18.6 percent had between 75% and 85% white students. So, about 30 percent of his sample is about as close to his ideal of "diversity" as we can reasonably expect given the demographics and the existence of historically black colleges (and maybe closer). Another 20 percent of the schools have between 85 percent and 90 percent white students– not all that bad, considering the demographic constraints they face. Most importantly, there are plenty of schools, about 30 percent of the sample, that are as diverse as we can reasonably expect a school to be in this society, and they provide more than enough observations to contrast with the least diverse schools to detect meaningful structural diversity effects.

Consequently, the impression that Chang tries to give, that variation in diversity is too small to detect meaningful effects, is quite false– especially given the huge sample size he is using and the ability it confers to detect even very small differences.

Chang's 1999 paper is mainly of interest for reporting how small the correlations are in the CIRP database between the DISCUSSION AND SOCIALIZATION variables and the final outcome variables he considers. Chang found that racial diversity accounts for only 1.1% of the total variance in students' proclivity to socialize with someone of a different race, and only .2% of the total variance in students' proclivity to discuss racial issues.

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[42] Chang 1996: 87-89

[43] The comparisons are between Changs' numbers in Table 4.2 of Chang 1996: 88 and data provided in the *Historical Statistics of the United States*..

[44] Note that because there are historically black colleges, other colleges will have a lower percentage of black students than they would otherwise have had.

This basic point remains valid whether one uses Astin's tripartite measure of the racial composition of the peer group or any of Chang's three measures of racial diversity. Indeed, Chang himself provides the data that clearly shows how close his three different diversity measures are to each other. The correlations between Diversity Range and Diversity Variability were so close that Chang reports findings only for the latter measure. Although he reports findings separately for the Diversity Variability and Diversity Heterogeneity variables, the correlations between these two measures are so close as to be virtually identical, as the following sample of findings shows:

> Institutional type (4 year colleges) is negatively correlated with Diversity Variability ($r=-.17$; $p<.001$), and Diversity Heterogeneity ($r=-.21$; $p<.001$).[45] Size is positively correlated with Diversity Variability ($r=.12$; $p<.05$) and Diversity Heterogeneity ($r=.14$; $p<.01$).[46] Selectivity is not significantly correlated with either Diversity Variability ($r=.01$; $p>.05$) or Diversity Heterogeneity ($r=.06$; $p>.05$).[47] Institutional control is not significantly correlated with either Diversity Variability (private; $r=.00$; $p>.05$) or Diversity Heterogeneity (private; $r=-.01$; $p>.05$).[48]

Chang's Findings Are Mixed

Chang's doctoral thesis at HERI/UCLA (Chang 1996) sets out six research hypotheses. The principal one for our purposes is Hypothesis 1. Here, in Chang's words, are the results of testing this hypothesis against the database he used (i.e., a subset of the very same database used in Astin 1993c):

> [Hypothesis 1] focuses on the principal goal of the study, that is, to test the educational efficacy of student diversity. Thirteen multivariate regression analyses were conducted to test the educational effects of racial diversity. The hypothesis is only partially supported by the findings. After controlling for student background characteristics, college environmental factors, and college experiences, we find that racial diversity has a positive impact on the white student's inclination to both socialize with someone of a different racial group and to discuss racial issues. This implies that a racially diverse student body is a direct causal factor in how frequently white students socialize cross-racially and discuss racial issues (There was no parallel positive

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[45] Chang 1996:93.

[46] Ibid. 95.

[47] Ibid.: 97.

[48] Ibid. 1996:

effect observed among students of color, and even the suggestion of a weak negative effect.)

In contrast, some of the findings fail to support the hypothesis, and at times even contradict it. Racial diversity has (a) a negative direct impact on overall satisfaction with college among students of color; (b) a marginal, indirect negative impact on retention among all students; and (c) no effect on intellectual self-concept, social self-concept, or college GPA....

To begin, it is not surprising to find that, the more students of color there are in the peer environment, the more likely white students will be to socialize across racial groups. This would be expected since a diverse student population ... creates more opportunities for white students–the majority on almost all campuses–to interact with students of color. What is interesting, however, is that racial diversity has differential effects on students of color and on white students. Since the nonsignificant results for students of color were actually of opposite sign to that found for white students, it seems clear that white students, compared to students of color, are more likely to be positively influenced by a diverse student population.

This phenomenon can be explained in part by changes in the statistical probability for cross-racial opportunities. In a more racially diverse campus there will (by definition) be more students of color, and their numbers will increase opportunities for these students to interact with students of their own racial group. By contrast, increased racial diversity increases the opportunities for cross-racial interaction among white students. Ironically, however, as racial diversity increases and white students subsequently have more opportunities to develop cross-racial friendships, students of color, if anything, become more inclined to socialize with some of their own race. ...

The results also show that diversity has a negative effect on overall satisfaction among students of color and are suggestive of a weak, indirect negative effect on college retention for all students. Moreover, diversity does not affect students' college GPA, intellectual self-concept, or social self-concept. It appears then that the effects of racial diversity are inconsistent, if not paradoxical. On the one hand, racial diversity has a negative impact on college satisfaction and possibly also on retention. On the other hand, it is positively associated with variables that

> themselves have positive effects on these very same outcomes."[49]

Chang's Findings are Extraordinarily Weak

In discussing Chang's findings, it is necessary to refer to two different writings. One is Chang's doctoral dissertation of 1996. The other is an article by Chang that was published three years later.[50] Chang 1996 and Chang 1999 use different databases. Each database, however, is a subset of the full CIRP database of the 1985-89 longitudinal survey that was used by Astin in Astin 1993c. The database used in Chang 1999 is the smaller of the two subsets, as shown in the following:

(1) The database for Astin 1993c included 309 four-year institutions; 24,847 students; 131 student input variables; 135 environmental "bridge" variables; 57 student involvement variables; and 82 final outcome variables.

(2) The database for Chang 1996 included 371 four-year institutions; 11,600 students, 26 student input variables; 24 environmental "bridge" variables; 13 student involvement variables; and 7 final outcome variables.

(3) The database for Chang 1999 included 371 four-year instituitons; 11,688 students, 16 student input variables; 14 environmental "bridge" variables; 14 student involvement variables; and 6 final outcome variables.[51]

Chang 1999 essentially adds nothing to Chang 1996. The 1999 paper is mainly of interest because it reports how small the correlations are between the DISCUSSION AND SOCIALIZATION variables and the final outcome variables:

> "When entered in the equation after controlling for precollege variables, racial diversity [of the institution] was associated with an R^2 increase of 1.1% [i.e., the racial diversity of the institution accounts for 1.1% of the total variance in students' proclivity to socialize with someone of a different race]. Although the total variance accounted for by this equation is not remarkable ... racial diversity continued to significantly affect student opportunities to socialize across race even after controlling for

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[49] Chang 1996: 149-155.
[50] Chang 1999.
[51] See Appendix VII for a tabular comparison.

> relevant student background, college environments, and college experiences."[52]

> "Similarly, racial diversity can be said to have a direct positive effect on discussed racial issues. After controlling for precollege characteristics, racial diversity accounted for an additional .2% R^2 increase [i.e., the racial diversity of the institution accounts for .2% of the total variance in students' proclivity to discuss racial issues].[53]

Obviously, these correlations are minuscule.

Interaction Effects, Intermediate Outcome Variables, and Final Outcome Variables

As we have previously noted, Chang (1996 and 1999) classifies the DISCUSSION and SOCIALIZATION variables as final outcome variables, whereas Astin classifies them as intermediate, student involvement variables. Astin's classification is clearly the preferable one.

The "in turn" language used by the HERI-CIRP researchers shows clearly that the DISCUSSION and SOCIALIZATION variables are really intermediate variables rather than final outcome variables. That is exactly how they were treated in Astin 1993c. Chang, however, prefers to treat them as final outcome variables, probably in an effort to find **some** *correlation between final outcomes and racial diversity*

Chang found that on campuses with greater racial diversity, white students are more likely to socialize with nonwhite students and to discuss non-racial issues. Note, however, that the increased discussion of racial issues reported by white students need not necessarily have been with nonwhite students. Furthermore, increased socialization by white students with nonwhite students is exactly what one would expect simply on the basis of Brownian motion on campuses that have more racial diversity, unless those campuses are racially segregated or balkanized. As Chang himself puts it:

> " .... it is not surprising to find that, the more students of color there are in the peer environment, the more likely white students will be to socialize across racial groups. The would be expected since a diverse student population ... creates more opportunities for white students– the majority on almost all campuses– to interact with students of color."[54]

So far as testing the Powell rationale is concerned, mere discussion of racial issues (across or within racial lines) and socialization across racial lines cannot be regarded as ends in themselves. At most, they could be regarded as desirable outcomes only to the extent that they have (as one might hope) a positive impact on other outcomes, which is presumably why Astin in Astin 1993c considered them as intermediate, student involvement variables.

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[52] Chang 1999: 388.
[53] Chang 1999: 388-89.
[54] Chang 1996: 150.

As we have seen, in his introduction to the paperback edition of Astin 1993c, Astin said: "Since these latter two student experiences are, *in turn* [emphasis ours], associated with a number of positive educational outcomes ... it seems clear that diversity can indeed have beneficial effects on student development." Note that this is something that it would not be appropriate to say about real final outcome variables, like satisfaction with college, GRE scores, or propensity to go on to graduate work. Take satisfaction with college, as an example. While it might make sense to test for correlations between satisfaction and say, propensity to go on to post-graduate work (i.e., to test the hypothesis that all other things being equal, students who are satisfied with their overall college experience tend to stay longer in higher education than those less satisfied), a measure of satisfaction in college is clearly "final" in a way that socialization across racial lines or discussing racial issues (across racial lines or not) is not. In undesirable campus climates, the impact of these two CIRP variables could actually be negative, and universities should take steps to make sure that they are positive. But all universities will, for example, as a matter of course want their students to be satisfied with their college experience.

One must keep in mind that as far as the Powell rationale is concerned, the question is not whether DISCUSSION and SOCIALIZATION have effects on real, final outcomes, but whether RACIAL DIVERSITY does. That is, what one really wants to know from the CIRP studies is how much of a difference, if any, the racial diversity of a student body has on real final educational outcome variables, given that the racial diversity of a student body has a statistically significant impact on DISCUSSION and SOCIALIZATION. This would give some indication of the likelihood that universities might at some point be able to improve the quality and frequency of discussions of race and cross-racial socialization on campuses enough to eventually be able to to demonstrate that campus racial diversity has an educationally significant impact on final student outcomes.

While Chang gives in detail the step-by-step beta coefficients for the DISCUSSION and SOCIALIZATION variables, neither he nor Astin provides the really crucial data, at least so far as the Powell diversity hypothesis is concerned, which is the way that these variables interact with racial diversity and final educational outcomes.[55]

An interaction effect is essentially a measure of the positive or negative synergies between (in this case) the following potentially interacting variables: the racial diversity of the student body, the DISCUSSION and SOCIALIZATION variables, and the final student outcome variables. The ACE-HERI-CIRP literature frequently reports that the researchers examine interaction effects, as is quite typical in multivariate analysis research generally. Furthermore, the interaction effects are precisely the phenomenon to which Chang is drawing our attention when he refers to the "potential" that racial diversity has to produce beneficial final student outcomes. In any case, the interaction effects are certain to be very weak, since correlations that would be used in the calculations are very small, and because one gets the interaction effects essentially by multiplying probabilities (i.e., fractions). The likelihood that the crucial numbers would be very low probably explains why they are not reported.

RACIAL DIVERSITY AND VIEWPOINT DIVERSITY

According to Justice Powell, preferential admissions policies like the plan that Harvard was following in 1978 can meet the compelling state interest test because campus racial diversity is correlated with viewpoint diversity and with beneficial educational outcomes. According to Powell, this provides a compelling justification for such policies under the First Amendment, even though he recognized that these were in obvious "tension" with Fourteenth Amendment principles. In his opinion in Bakke, Powell said:

> It is the business of a university to provide that atmosphere which is most conductive to speculation, experiment and creation. .... 'The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, [rather] than through any kind of authoritative selection.' United States v. Associated Press, 52 F. Supp. 362, 372."

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[55] Astin discusses interaction effects, and stresses their importance, in Astin 1993a, his systematic work on methodology (1993a: 67, 120-127, 298-300, 311-312). Researchers studying longitudinal multivariate databases examine interaction effects as a matter of course. Since the defense of racial preferences in university admissions has come to rest primarily on what might be called the "in turn" hypothesis, which essentially involves an hypothesis about interaction effects, it is odd that, at least to our knowledge, the ACE–HERI-CIPR literature fails to report the interaction effects that the researchers believe justify (or might someday justify) preferential admissions policies.

> The atmosphere of "speculation, experiment and creation"– so essential to the quality of higher education– is widely believed to be promoted by a diverse student body. ... As the Court [438 U.S. noted in Keyishian, it is not too much to say that the "nation's future depends upon leaders trained through wide exposure" to the ideas and mores of students as diverse as this Nation of many peoples.
>
> Thus, in arguing that its universities must be accorded the right to select those students who will contribute the most to the "robust exchange of ideas," petitioner invokes a countervailing constitutional interest, that of the First Amendment.

While this passage is not as clear as one might wish it to be, it is reasonably clear that the following different, though related, claims are packed into it:

(1) Racial diversity is correlated with greater viewpoint diversity on campus.

(2) Viewpoint diversity, with or without a racial dimension, is an intrinsic educational good, and one that has beneficial educational outcomes.

(3) Even beyond this simple correlation, racial diversity adds another *dimension* to viewpoint diversity on a campus. Statistically speaking, this amounts to the claim that racial diversity *interacts* with viewpoint diversity.

(4) Racially dimensioned viewpoint diversity is a compelling justification for seeking racial diversity on a campus, and justifies its pursuit even by means that are in "tension" with the Fourteenth Amendment.

(5) Racially dimensioned viewpoint diversity provides a constitutional justification for preferential admissions policies that could not be provided by correlations between racial diversity and other effects (e.g., increased frequency of interracial socialization, interracial dating, or interracial marriage on campus).

The CIRP database is robust enough to throw light on claims (1)-(3). So far as we know, no research based on the database has yet addressed claims (2) and (3), but Mitchell J. Chang has looked at the first claim in an unpublished paper entitled: "Does increase [sic] racial diversity lead to a more diverse collection of thoughts, ideas, and opinions on campus?: A study of racial diversity and students' viewpoints."[56]

In the Abstract of the paper, Chang poses the following three questions (all three of which he believes are to be answered in the affirmative):

(1) Do viewpoints that are meaningful to higher education differ by racial groupings?

(2) Do campuses that are more racially diverse have a broader collection of viewpoints held by students?

(3) Do the long-term trends of student's collective viewpoints vary by the level of racial diversity on campus?

The statistical tests that Chang used are ANOVA, Kruskal Wallis, and the Levene test of homogeneity of variances. The tests were applied to a national sample of over 5,000 students from 93 four-year institutions. The students were surveyed in the fall of 1994 and again in 1998.[57]

The analysis in "Diversity & Viewpoints" is based on an examination of the responses to seven questions on the 1994 CIRP entering freshmen survey (SIF) and 1998 follow-up survey (FUS). This selection was based, presumably, on the assumption that the questions might reasonably be expected to show diversity of opinion across racial groups. The questions were as follows:

(1) The Federal government is not doing enough to protect the consumer from faulty goods and services.

(2) The Federal government should raise taxes to reduce the deficit.

(3) There is too much concern in the courts for the rights of criminals.

(4) The death penalty should be abolished.

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[56] Henceforth we shall refer to this paper by its running head: "Diversity & Viewpoints." The paper is available on the Web as an Adobe Acrobat PDF document at: http://www.gseis.ucla.edu/faculty/chang/Diversity_Viewpoints.pdf

[57] This is a different sample from the one used in Astin 1993, Chang 1996, and Gurin 1999. Astin 1993, Chang 1996, and Gurin 1999 use the 1985-1989 ACE-CIRP undergraduate study database (or a subset of it); Chang's "Diversity and Viewpoints" uses the 1994-98 ACE-CIRP undergraduate study database.

(5) Employers should be allowed to require drug testing of employees or job applicants.

(6) A national health care plan is needed to cover everybody's medical costs.

(7) Racial discrimination is no longer a major problem in America.

(8) Wealthy people should pay a larger share of taxes than they do now

(9) Colleges should prohibit racist/sexist speech on campus.

Chang also used a measure of student Political Orientation. This was also taken from the CIRP 1994-98 undergraduate study. The Political Orientation measure used a five-point scale: far left; liberal; middle of the road; conservative; and far right.

According to Chang, the findings support the conclusion that racial diversity is a "reasonable proxy" for viewpoint diversity in higher education:

> The results of this study correspond well with Justice Powell's intuition that attaining greater diversity broadens the range of viewpoints held by the student body. According to him, these differences in viewpoints are meaningful for higher education because they stimulate a more robust exchange of ideas, which encourages greater speculation, experimenting, and creativity. .... This study helps to clarify how diversity may actually foster those benefits by identifying several attributes that are unique to racially diverse student bodies. ... Because racial differences at the group level continue to be meaningful and perhaps even intractable, the opportunity to learn from and with students of different races is educationally compelling and relevant.
>
> The results of this study reveal that accounting for race to admit students achieves more than a student body that 'looks different.' At the point of college entry, there are significant differences in viewpoints between racial groups on a variety of pressing contemporary issues. Although individuals of any given race hold the full range of opinions, as a group, average viewpoints differ from each other. These racial group differences are educationally relevant because they affect the collection of thoughts, ideas, and opinions of the student body. Overall, the variance of students' collective viewpoints tends to be greatest in the most racially diverse campuses, followed by somewhat diverse, then least diverse campuses. These findings suggest

Increasing racial diversity is not correlated with increasing viewpoint diversity in any consistent way. Furthermore, what changes there are are extremely small, and show no consistent directionality.

> that more racially diverse campuses have a *much higher likelihood* [emphasis ours] of exposing their students to a broader range of viewpoints on academically relevant issues."[58]

This passage addresses only one of the claims that we believe are packed into the Powell rationale for racial preferences in university admissions– the claim that racial diversity is correlated with greater viewpoint diversity on campus. Even on this point, however, we must disagree with Chang.

Chang's findings show that trying to enhance viewpoint diversity on a campus by increasing the racial diversity of the campus would be extraordinarily inefficient.

Since this is a matter of judgment, readers will have to decide for themselves whether Chang's findings justify the claim that race serves as a "reasonable proxy" for viewpoint diversity on a campus.[59] Readers should probably begin by looking at Figures 1 and 2 from Chang's paper. Figure 1 plots the responses of students, broken down into the categories white, black, Asian-American, and Latinos, against the Political Orientation variable. Figure 2 plots the responses of students, broken down by the same racial/ethnic categories, against the statement: "A national health care plan is needed to cover everybody's medical costs."

Chang uses standard statistical tests to test for the statistical significance of group variances, and finds that the differences in variances are significant for some (though not all) of these cases. But such tests do not settle the really crucial question: When are the differences in variances *educationally* significant?

There is no well-established standard for answering this kind of question. It is a matter of judgment. We are constrained to say, however, that when we view these graphs, we are struck far more by the overlap and the similarity between the curves than by the differences.

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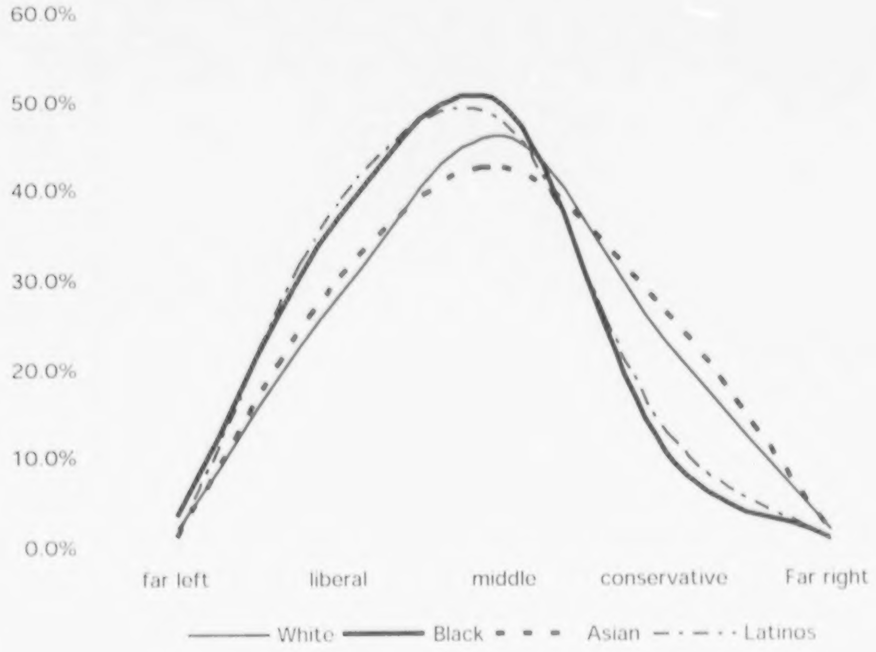
[58] "Diversity & Viewpoints," pp. 35.

[59] Ibid., p. 5.

From Chang, "Diversity & Viewpoints," p. 48, http://www.gseis.ucla.edu/faculty/Diversity_Viewpoints.pdf

Figure 1

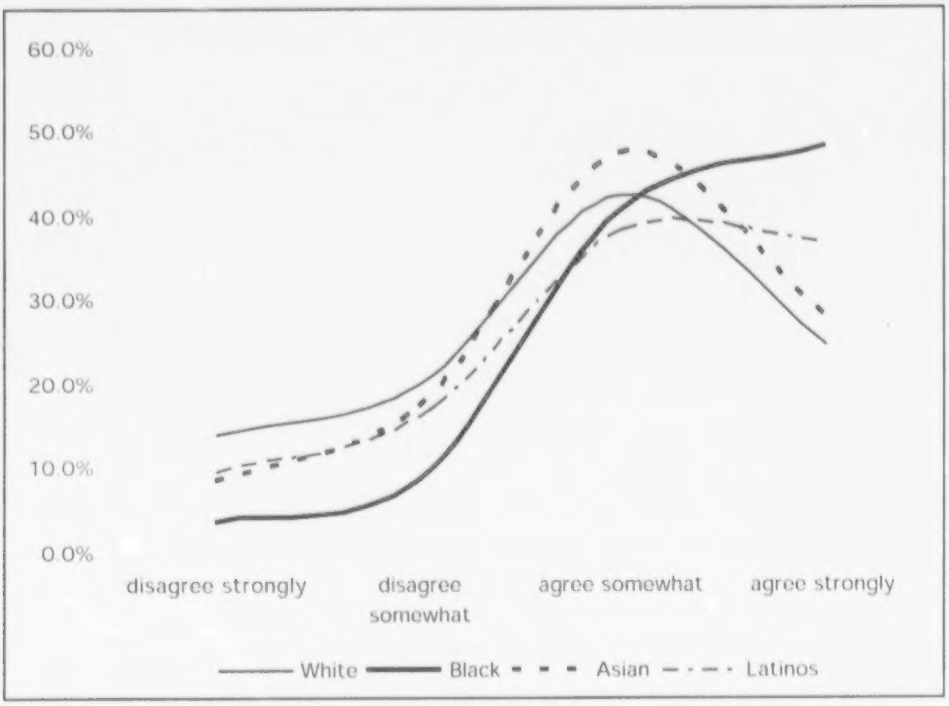
Political Orientation by Race



From Chang, "Diversity & Viewpoints," p. 49 http://www.gseis.ucla.edu/faculty/chang/Diversity_Viewpoints.pdf

Figure 2

Opinion on the Need for a National Health Care Plan by Race



One way to get a better handle on the question is to look at the means and the size of the standard deviations. Table 2 on p. 43 of Chang's paper (which is not given in this report) shows that the mean and standard deviation differences are very small. Furthermore, increasing racial diversity is not correlated with increasing viewpoint diversity in any consistent way. The average change in the variances of viewpoints between 1994 and 1998 by level of racial diversity for the ten items Chang examined are as follows ("Diversity & Viewpoints," Table 6, p. 48):

	Low Diversity	Medium Diversity	High Diversity
(Average of the 10 items)	-0.019	0.021	-0.001

These changes are extremely small. Furthermore, they show no consistent directionality. The average change of variances for "Medium Diversity" institutions is positive (though very low), whereas the average change of the variances for "Low" and "High Diversity" institutions is negative (though also very low).

Chang did not attempt to assess the impact that viewpoint diversity has on final student outcomes, although this would clearly be worth doing.

Another way of looking at the question of educational significance is to ask how efficient it would be to try to enhance viewpoint diversity on a campus by increasing the racial diversity of the campus. It is evident from the graphs and from the tables in Chang's paper that this would be an extraordinarily *inefficient* means of increasing viewpoint diversity.

The simplest and most straightforward way to do this would be to have universities simply question applicants about their viewpoints on various issues, and to consider their responses in their admissions decisions. But there are other possibilities. One is to use socioeconomic status (SES) as the proxy variable for viewpoint diversity (much in the way that some have argued that SES should be used as a substitute for race in admissions policies generally). Since we know from the CIRP database itself that SES is a highly salient variable in higher education, there is good reason to believe that SES would be a much more efficient criterion to use to promote viewpoint diversity than racial diversity. Chang, in fact, mentions this as a possibility that needs to be investigated, though he does not do so in "Diversity and Viewpoints."[60]

So far, we have used Chang's findings to examine only the second of the four questions we believe are packed into the Powell diversity rationale (i.e., whether campus racial diversity is correlated with viewpoint diversity). The other two questions, however, involve assessing the impact that viewpoint diversity has on final student outcomes. As Chang acknowledges, the tests and methodology he used in "Diversity and Viewpoints" cannot address these questions:

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[60] Ibid. p. 19

> This study ... is not a college impact study even though longitudinal data were utilized. The purpose of the analyses was not to investigate how increased racial diversity might affect students' educational experiences as other studies have previously done ... but to examine whether there are differences between racial groups and between students enrolled in institutions with differing levels of racial diversity. Accordingly, this study used designs with strength in testing between group differences and for some cases, with ability to handle significant differences between group variances. ... The designs used in this study, however, do not control for student background characteristics, institutional factors, and student experiences that are typically accounted for in college impact studies. It is unclear if and how these other factors might affect the dependent measures and examining these effects would be an important area for future studies.[61]

There are very good reasons for using the CIRP database to test for college impacts. One is that such tests would provide an additional (albeit indirect) way of testing for the educational significance of the differences in variances themselves. That is, any showing that variances in viewpoint diversity are correlated with final student outcomes in an educationally significant way would be evidence for the *educational* significance of those variances themselves. Another is that impact tests would probably come much closer than the ones Chang has already employed to testing the claims that lie at the heart of Powell's diversity rationale for racial preferences in university admissions.

Using the CIRP database to get closer to the inner core of Powell's diversity rationale would involve doing three things:

> Constructing a measure of viewpoint diversity, using the items provided by the CIRP database.
>
> Finding the correlations between viewpoint diversity and final student outcomes.
>
> Determining the *interactions* between racial diversity of the student body, viewpoint diversity, and final student outcomes.

We doubt very much that these tests would support Powell's diversity rationale for racial preferences. For one thing, as even Chang concedes, the overlap in the responses to the ten items is very large. This means that the correlations between viewpoint diversity and final student outcomes are likely to be very small as well. Furthermore, since HERI has found that there are no educationally significant correlations between racial diversity and final student outcomes, it is likely that the interaction effects between racial diversity, viewpoint diversity, and final outcomes will also be negligible or non-existent.

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[61] Ibid., pp. 18-19.

THE EXPERT WITNESS REPORT OF PATRICIA Y. GURIN

Patricia Y. Gurin is Chair of the Department of Psychology and Interim Dean of the College of Literature, Science, & the Arts at the University of Michigan at Ann Arbor. When the University became a defendant in a lawsuit brought by the Center for Individual Rights and Maslon Edelman Borman & Brand on behalf of plaintiffs Jennifer Gratz and Patrick Hamacher, the University commissioned Prof. Gurin to write a report as an expert witness in the case defending the educational benefits of racial diversity on campus. The report she submitted to the court is the "Expert Witness Report of Patricia Y. Gurin" (Gurin 1998). Our references to this document (which we will sometimes refer to as the "Gurin Report") are to the hard copy version submitted to the court. An online version without pagination is available on the Web at http://www.umich.edu/~urel/admissions/legal/expert/gurintoc.html.

Three different studies are incorporated in Gurin's Expert Report: a study based on subset of the database for the HERI-CIRP 1985-89 longitudinal undergraduate survey; a University of Michigan study (the Michigan Student Study, or MSS); and a study based on a course given at the University by the Intergroup Relations, Conflict, and Community Program (IRCCP). In this section of our report, we shall be concerned only with the first study.

Of the studies and reports dealing with the 1985-89 HERI-CIRP longitudinal undergraduate study, the fullest by far is Astin 1993c. That study involves 309 four-year institutions; 24,847 students, 131 student input variables, 135 environmental variables, 57 student involvement variables, and 82 outcome variables. The later studies by Chang (1996 and 1999) involved a subset of this 1985-89 undergraduate database.[62] The database used in Gurin's Expert Report was an even smaller subset than was used in either of the Chang studies. The Gurin study involves 184 four-year institutions, 9,316 students, 6 input variables, 6 environmental "bridge" variables, 5 student involvement variables, 15 learning outcomes, and 8 democracy outcomes.[63]

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[62] See the composite table in Appendix VIII of this report.

On 12 February 1999, Gurin was deposed by David Herr of Maslon Edelman Borman & Brand.[64] We learn from her deposition that HERI was, in effect, a cooperating organization in the production of the Gurin Report. Gurin was not herself familiar with CIRP (Gurin 1999: 10) and therefore relied on Eric Dey and Sylvia Hurtado, two colleagues at Ann Arbor who were familiar with it (Gurin 1999: 8). Both Dey and Hurtado received their doctorates from HERI/UCLA, and in fact were senior researchers there before joining the faculty of the University of Michigan.[65] It was Dey who went to UCLA to get permission to use the CIRP data set (Gurin 1999: 27-28). The computer analyses were also conducted by Dey (as well as by some students). In her deposition, Gurin did not say how the institutional sample was selected from the CIRP database, other than that she asked Dey to "specify our schools by schools that represent the mass number of schools in the United States where structural diversity can be more operative" (Gurin 1999: 41). During the deposition, she acknowledged that she did not know which institutions were included in her study (Gurin 1999: 41), or even whether the University of Michigan itself was (Gurin 1999: 38).

Since her Expert Report was written to defend the University of Michigan's racially preferential admissions policies, the key variable for Gurin's study was what Astin (1993c) calls the "racial composition of the peer group," or what Gurin calls the "structural diversity" of the institution.

An Overview of the Gurin Report

The central problem that Gurin faced in producing her Expert Report is that the national database on which she had to rely actually *disconfirms* the claim that she was asked by the University to defend. How does Gurin deal with this highly embarrassing fact?

The short and definitive answer is that *she tries desperately to change the subject*. Her whole methodology is to treat what Astin calls "diversity activities" (and what she calls "campus experience variables") as the real matter of interest, rather than the racial diversity of the institution (what Gurin calls "structural diversity").

As a way of approaching the only question before the court, this is absurd, and can be explained only as a devious attempt to distract attention from Astin's fundamental finding that there are no educationally significant correlations between racial diversity and student outcomes.

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[63] These figures are for the four-year study only. The part of the Gurin Report that is based on the CIRP data also includes a nine-year follow-up study, which involved different outcome variables. See the composite table of Appendix VIII of this report.

[64] Gurin 1999.

[65] In recent years, the University of Michigan has placed a major emphasis on "diversity." For an interesting discussion of the University's diversity program, see Lynch 1997: 274-323.

But there are other problems with Gurin's analysis as well:

First, Gurin uses a much smaller subset of the full and comprehensive database that is available for the CIRP 1985-89 longitudinal study, including far fewer students and control variables than the full CIRP study. The inclusion of far fewer control variables is a particularly serious matter, since the validity of regression analysis depends on controlling for all possible sources of bias. Gurin does not justify her omission of two year colleges from the CIRP database. Gurin also drops historically black colleges from the CIRP sample. While "percent minority" has a different meaning at these colleges than at other institutions, the data from historically black colleges is still relevant to some peripheral issues. Instead of dropping these institutions from the sample, Gurin could have analyzed these data separately.

Gurin's term "classroom diversity" is likely to be misleading, since it invites confusion with the very different concept of "diversity in the classroom." There is no necessary connection between Gurin's "classroom diversity" variable and racial diversity, since it is entirely possible for a white student, for example, to take an ethnic studies course that has no blacks and Latinos in it at all.

Although Gurin includes far fewer students and institutions than were available to her, the samples she used were still very large. Huge databases of the sort she worked with are capable of showing trivial effects as being statistically significant. That is why Astin himself follows the practice of not reporting on statistically significant findings unless the Beta coefficients–a measure of the predictive power as opposed to the statistical significance of a variable–have an absolute value of .15 or higher. Without any explanation, Gurin departs from this practice, and reports anything with a statistical significance of .05, no matter what the magnitudes–i.e., Beta coefficients–might be. In fact, in order to suggest more statistically significant relationships for black and Hispanic students, she uses an even more liberal test of statistical significance for them ($p<.10$).

Her *modus operandi* is to then place little black boxes in her tables whenever she finds a purely statistical significance for her relationships. This is clearly intended to give the statistically unwary the impression of a consistent pattern of significant findings. In fact, the findings are trivial. In many cases, the relationships are not even statistically significant, and in the cases where Gurin claims statistical significance, the correlations are entirely trivial. Typically, the measures she studies explain less than 2% of the total variance. These magnitudes are so low that they could not possibly be taken by any reasonable person as a justification for racially discriminatory admissions policies.

But the situation is even worse than this, because even Gurin's claim of statistical significance is suspect, given the type of regressions she employs. She considers four diversity experiences: attending a racial/ethnic workshop, discussing racial issues, socializing with someone of a different race, and having close college friends of a different race (or of the same race, in the case of minority students). Gurin never explains why she uses models that utilize only *one* of these four variables at a time. This is an anomalous way to model a regression analysis. Using the standard model of regressing on all four variables at the same time would very likely reduce the number of relationships in her study that are even statistically significant, though we are unable to say by how much, since the database she uses is not available to us.

Gurin's claims of statistical significance are further impeached by the fact that her outcome variables are soft student self-assessments, many of which are non-cognitive "democracy outcomes."[66] There may be only a weak relationship between student self-reports for these outcomes and real outcomes, and in any case the relationships are certainly far from perfect. (This is also true for outcomes like self-reported GPAs, but the problem is especially acute for the kinds of non-cognitive outcomes that are at the heart of Gurin's report.) Self-reported variables are not criterion-based variables; one must therefore factor in the weakness of the relationship between the self-reported variable and real outcomes. This consideration is a further impeachment of Gurin's claims even for the purely *statistical* significance for her relationships.[67]

The University of Michigan was not sued because it was offering ethnic studies courses or workshops, or because it had prohibited discussion of race on campus or interracial socializing.

The most important point, however, and one that cannot be emphasized enough, is that the relationships Gurin chose to study are what she calls "diversity experience variables" rather than campus racial diversity itself. As we have already pointed out, this makes absolutely no sense as a way of addressing the question whether campus racial diversity might produce educational benefits (and therefore whether racial preferences in admissions might do so by increasing racial diversity through brute force). After all, the University of Michigan was not sued because it was offering ethnic studies courses or workshops, or because it had prohibited discussion of race on campus or interracial socializing. It was taken to court because its admissions policies employ racial classifications that are designed to increase racial diversity.

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[66] Many would question whether Gurin's "democracy outcomes" are genuine academic outcomes. Even among the self-reported cognitive outcomes, only one–self-reported GPA–asks the student to report on the *University's*, rather than the student's, assessment of his or her academic skills.

[67] Astin, of course, never claimed to find any educationally significant correlations between racial diversity and student outcomes, so the question doesn't even arise here. Nevertheless, it is worth pointing out that Astin did claim in *What Matters in College?* that there are educationally significant correlations between diversity activities (what Gurin calls campus diversity experiences) and some non-cognitive outcomes of the kind that Gurin calls "democracy outcomes." The point we are making here, therefore, applies with equal force to Astin's claims about the educational benefits of his "diversity activities." In theory, the same weakness of correlation might lead to findings of non-significance when the real correlation is significant, but this is only an abstract possibility; student self-reports are likely to find positive relationships where none exist, rather than the other way around.

This is obvious enough, just as a purely intuitive or a priori matter. However, Gurin's methodology is rendered all the more inexplicable because internal evidence from the CIRP database itself shows that diversity activities cannot be treated as even a rough proxy for racial diversity. The reason is, simply, that Astin's study, which uses the full CIRP database, found some educationally significant correlations between diversity activities and some student outcomes, but *none* for racial diversity itself.

Gurin has attempted to deflect this fundamental and dispositive objection to her entire methodology by claiming that it is still useful to consider diversity experiences, because they are correlated with educational benefits, and because the diversity experiences themselves are correlated "in turn" with campus racial diversity.

Gurin cannot argue that racial diversity produces educational benefits even when it is conjoined *with her diversity activities.*

This response to our objection is utterly futile, for at least two reasons. First, the argument is unsound, because it can be shown mathematically that if variables A and B are positively correlated, and variables B and C are positively correlated, it is possible that A and C are negatively correlated. To be sure, one can deduce that A and C are positively correlated if one knows that the correlations between A and B and between B and C are very high (near 1). But Gurin's correlations are less (usually much less) than 0.25, which isn't nearly large enough to justify the in-turn argument logically or mathematically.

But there is more to this than the purely mathematical argument. The point is further confirmed by internal evidence from the very database that Gurin herself uses. That is because the four campus experience variables that Gurin considers (i.e., the things that Astin typically calls "diversity activities") are *controlled for in the ACE-HERI-CIRP regressions.* After all these variables have been controlled, the regressions fail to find significant correlations between racial diversity and final student outcomes." This means that Gurin cannot argue that racial diversity produces educational benefits *even when it is conjoined with these other factors.* This finding completely devastates Gurin's "in turn" hypothesis.

In order to deflect attention from the central methodological error of her analysis, Gurin has also alluded to what she calls the "remarkable consistency" in the pattern of statistically significant relationships. But this attempt to meet the objection is also futile, for several reasons.

First, Gurin's assertion that statistical significance is a "basic indicator of the strength" of her relationships is a fundamental–and rather elementary–statistical error. With a large enough sample, even a small difference can be statistically significant (i.e., hard to explain by the luck of the draw), but this doesn't necessarily make it important.

The more serious objection, however, is that the pattern of findings to which she refers is totally irrelevant to the matter before the court. That is because the pattern to which she refers is not between student outcomes and campus racial diversity; it is instead between student outcomes and four diversity activities, none of which can be treated as even a rough proxy for racial diversity.

It is, therefore, inexplicable, and indeed rather astonishing, that Gurin should ask us to eyeball a pattern of "consistent findings" about irrelevant variables in order to somehow convince ourselves that racial diversity is correlated with beneficial educational outcomes. After all, the CIRP database that she herself uses permits a direct test of the *relevant* hypothesis. Astin tested it on what is essentially the same database and concluded that one must *reject* the hypothesis that they are so correlated–a fundamental and dispositive finding to which Gurin never refers even once in her entire report.

There is a strong
correlation (.39)
between Selectivi
and Racial Tensi
in the CIRP data-
base. This
suggests that it
might be useful to
examine the poss
ble impacts of
racially preferenti
admissions polici
on colleges and
universities by us-
ing Selectivity as
rough proxy or
substitute for the
variable Racial
Preferences.

Gurin is actually at two removes from the policies she claims to be defending. As we have seen, the variables she considers (diversity experiences) are not relevant to the issue before the courts. But even a showing that racial diversity per se *is* correlated with educational benefits would not settle the matter, for it matters *how racial diversity is achieved*. It also has to be demonstrated that racial preferences, which are designed to artificially increase diversity, do not themselves have a *negative* impact on student outcomes.

Although Gurin's diversity experience variables cannot serve as proxies for campus racial diversity, it is often useful to look for proxies for the variables one wants to study. We believe this may be true for racial preferences in university admissions. In order to test the hypothesis that racial preferences have a negative impact on student outcomes, one proxy variable that should probably be examined is the selectivity of the institution, especially as measured by the SAT and other standardized tests. Much of the current controversy over affirmative action in university admissions centers on these tests, since their use has an adverse impact on black and Hispanic applicants. Since the disparate impact is likely to be greater the more selective the institution, any correlations involving Selectivity (a variable that is include in the HERI-CIRP database) is of considerable interest. And in fact Astin (1993c: 51) reports that there is a strong correlation (.39) between Selectivity and Racial Tension. This suggests that it might be useful to examine the possible impacts of racially preferential admissions policies on colleges and universities by using Selectivity as a rough proxy or substitute for the variable Racial Preferences.

This is exactly the kind of finding that researchers should be able to explore with the HERI-CIRP database itself. Unfortunately, the HERI-CIRP database has not been released to any researchers who do not themselves favor racial preferences. The fact that the HERI-CIRP database has not been made widely available to other researchers is a radical and disturbing departure from normal research practice. It is particularly disturbing now that the CIRP database is at the very center of controversies over racially preferential admissions policies in what is potentially landmark constitutional litigation.

Like the much larger and more comprehensive HERI-CIRP database from which it is drawn, the database that Gurin uses has not been made available to the wider research community either. Her omission is even more indefensible than HERI's. In *What Matters in College?*, Astin was looking at so many ways in which student and institutional characteristics might affect a large number of possible student outcomes that it would have been unreasonable to expect him to provide the data and methodological details that would be expected in a scholarly, peer-reviewed research report on a very specific research question.[68] But the omission in Gurin's case is much more serious, for in her "Expert Witness Report" she is not trying to paint a picture of the college experience generally with broad strokes; she is instead addressing (or more precisely, should have addressed) a very specific and narrow research question. Her research report should therefore have been rigorous, and should have met all the standards required for such research by scholarly, peer-reviewed professional journals. Gurin's report has not previously appeared in any such journal, nor could it be, for it fails to meet even the minimal standards for a peer-reviewed scholarly research report in a number of respects, including the failure to report how she codes her variables or how she selected her variables from those of the much larger HERI-CIRP 1985-89 undergraduate longitudinal study, and also her failure to justify the exclusion of two-year colleges from her sample. As such, her "Expert Witness Report" is not scholarly, peer-reviewed research. It is what is called "advocacy research."

Gurin's "Expert Witness Report" is not scholarly, peer-reviewed research. It is what is called "advocacy research."

The National Association of Scholars asserted in the brief that it filed in *Gratz v. Bollinger* that "[Neither the AALS nor the ACE brief] claims that campus racial diversity (much less campus racial diversity achieved through racial preferences) improves academic outcomes." The NAS also pointed out that the "University's amici ignore that portion of Astin's work that directly addresses the question at hand" (NAS Br. at 7)–i.e. the portion that finds no correlation between racial diversity and educational outcomes.

The Hon. Patrick J. Duggan noted in his opinion and ruling in *Gratz v. Bollinger* on 13 December 2000 that the NAS specifically took issue with the studies relied upon by the American Association of Law

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[68] Not that this is an excuse for HERI's failure to release the database widely to the larger research community for more general research purposes.

Schools, contending that such studies really report that 'outcomes are generally not affected' by racial diversity on campus (NAS Br. at 6-7)."[69] *Significantly, Judge Duggan never disputes this claim in his opinion.* This is quite inexplicable on the merits, since the University's defense collapses completely if outcomes are *not* affected by racial diversity on the campus. And if it is true that the only existing national database that can adequately address this question actually *disconfirms* the University's claims, on what basis did Judge Duggan reach the conclusion that "... a racially and ethnically diverse student body produces significant educational benefits such that diversity, in the context of higher education, constitutes a compelling governmental interest under strict scrutiny"?[70] The lapse in his argument, it seems to us, can only be explained if one assumes that Judge Duggan took the question whether diversity *activities* are connected with positive educational outcomes to be the same thing as the question whether the racial diversity of the student body is. But clearly, they are not the same thing.

If the only existing national database that can adequately address this question actually disconfirms *the University's claims, on what basis did Judge Duggan reach the conclusion that "... a racially and ethnically diverse student body produces significant educational benefits such that diversity, in the context of higher education, constitutes a compelling governmental interest under strict scrutiny"?*

In Step 3 of her regressions, Gurin uses the racial diversity of an institution as a control variable. This means, as she notes herself, that when a campus experience variable, such as the discussion of racial issues, is a statistically significant predictor of some final outcome (such as socialization with minorities after graduation), then, according to her model, the size of the effect is independent of the number of minorities on campus. Thus the claimed beneficial effects of her campus experience variables would remain statistically significant even if the number of minorities on campus were to drop.

Gurin never incorporates all of her campus experience variables into a single regression. For all of her rhetoric, all she is doing is running regressions that leave out relevant explanatory variables. If she were to include all of her four diversity activities in one model, it is likely that the effect ascribed to the percentage of minorities on campus would disappear.

In the following, we develop some of these points further.

A Terminological Point

Since her Expert Report was written to defend the University of Michigan's racially preferential admissions policies, the key variable for her study was what Astin (1993c) calls the racial composition of the peer group, or what Gurin calls the "structural diversity" of the institution. Her task was to demonstrate that structural diversity has direct effects, not indirect ones.[71] This she fails to do, just as Astin did. Like Astin and Chang, she resorts instead to what we have called the "in turn" hypothesis:

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[69] Duggan Opinion: 25.

[70] Ibid., p. 26.

> Institutions of higher education that deliberately provide opportunities for positive intergroup interactions as they improve the representation of different racial/ethnic groups on campus are able to create the conditions for the positive effects of diversity on student development. As the educational institution becomes more multicultural in focus and its functioning, it is able to realize the benefits of various forms of diversity for all students. Research supports these different points and show that *structural diversity improves opportunities for interaction, which in turn, has positive effects on learning and democracy outcomes.* [italics in original][72]

Before entering into a more detailed criticism of Gurin's Expert Report, it is necessary to make a terminological point about her intermediate "interaction" variables.

In Gurin's analysis, special attention is paid to whether or not a student takes an ethnic studies course. Gurin calls this variable "classroom diversity." In our view, this is likely to be misleading, since it invites confusion with the very different concept of "racial diversity in the classroom." The latter concept would be the classroom counterpart of the campus variable "structural diversity," or the racial composition of the student body. It is important to note that there is no necessary connection between Gurin's "classroom diversity" variable and racial diversity, since it is entirely possible for a white student, for example, to take an ethnic studies course that has no blacks and Latinos in it at all, and vice versa. Accordingly, we believe it is preferable to label this variable "Took Ethnic Studies Course," and we will continue to do so throughout the ensuing discussion.

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[71] Astin has defined "direct" and "indirect" effects as follows (1993c: 313): "[Direct environmental effects] are those that are unique to the environment in question and cannot be attributed to other environmental variables. What do we mean when we say that a particular environmental characteristic has a 'direct' or 'indirect' effect? A variable can be considered as having a direct effect when it enters the regression equation and maintains a significant Beta coefficient even after all other variables have entered the equation. ... When this happens, the environmental variable is continuing to make a *unique* contribution to the outcome that cannot be accounted for or explained entirely by the effects of other environmental variables. An indirect effect is said to occur when (1) an environmental variable has a significant Beta coefficient after inputs have been controlled, but (2) the coefficient shrinks to nonsignificance when other environmental variables are added to the equation. In other words, when the effect of a particular environmental variable can be completely explained in terms of other 'mediating' variables, then its effect on the outcome is said to be entirely indirect."

[72] Gurin 1998: B, 2.

We give below the wording of the survey items from the 1989 HERI undergraduate survey on which Gurin's campus experience variables are based.[73]

> Since entering college have you (Yes/No):
> Enrolled in an ethnic studies course
> Attended a racial/cultural awareness workshop
>
> For the activities listed below, please indicate how often–Frequently, Occasionally, or Not at all– you engaged in each during the past year:
> Discussed racial/ethnic issues
> Socialized with someone of another racial/ethnic group[74]

The only part of Gurin's analysis that can shed any light at all on this question is Step 3 of her models. An examination of this regression step shows why Gurin never discusses the correlations between structural diversity and the student outcome variables–the only correlations that, in the final analysis, are relevant to the issue before the court

The Relationships That Gurin Claims Are Statistically Significant Are Exceedingly Weak

Gurin's Expert Report presents four different multiple regression models for exploring the impact of various factors (which she calls "campus experience variables") on 16 student learning and 7 democracy outcomes. Each model includes whether or not a student attended an ethnic studies class (Gurin calls this "classroom diversity"). In addition, each model includes one of the following four variables:

- Attending a racial/cultural awareness workshop
- Discussion of racial issues
- Socializing with someone from a different racial/ethnic group
- The proportion of close friends in college who were of a different (or same) race/ethnicity

Her statistical analysis proceeds in three stages or steps. In the first step she controls for "student background characteristics" (such as SAT score, high school GPA, ethnic diversity of high school classmates, etc.), in order to determine the impact that these factors have on student learning and democracy outcomes. In the second step she adds the campus experience variables to investigate how they, in combination with student background characteristics, impact student outcomes.

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[73] One of these variables apparently comes from a 9-year HERI longitudinal survey that Gurin and Dey incorporated into the Gurin Report, since the corresponding item is not found in the 1989 FUS (see Wingard et al. 1989: 201-208). So far as we know, the instrument used in this 9-year study has not been published, nor has HERI issued a comprehensive report of the findings. Few details about this part of the database are provided in the Gurin Report. As a result, we are unable to give the exact wording of Gurin's fifth "campus experience variable."

[74] From the 1989 HERI-CIRP Follow-Up Survey. Wingard et al. 1989: 204, 206.

According to the model that she uses, there is a statistically significant but very small positive effect on a number of student outcome variables for white students who take ethnic studies courses and engage in other activities– workshops, discussion, etc.. She finds far less evidence of a positive impact for college experience variables among black and Hispanic students, even though she uses a less stringent test for statistical significance (.10 rather than the generally accepted .05 probability that a result occurs by chance).

In any case, both the Step 1 and Step 2 models are completely irrelevant to the question before the court in the University of Michigan litigation. All these models show is that taking an ethnic studies course and/or attending a workshop, discussing racial issues, etc. have a small positive impact on some student outcome variables. If the question before the court were whether the University of Michigan should be allowed to continue to have ethnic studies classes, sponsor racial/cultural awareness workshops; or ban inter-racial socialization or the discussion of racial issues, these results might be of some interest. But these are not the questions before the court, nor will they be before the court in any other litigation over racially preferential university admissions policies.

The issue is simply whether the University of Michigan is permitted by the federal constitution to manipulate the proportion of non-white students attending the university by explicitly taking a student's race into consideration during the admissions process. The only part of Gurin's analysis that can shed any light at all on this question is Step 3 of her models. In Step 3, Gurin adds variables to control for the impact of "institutional characteristics." These include the type of school (college or university), control (public or private), selectivity (mean SAT), faculty and institutional emphasis on diversity, and the one variable of most interest in answering the question posed in the previous paragraph: structural diversity, or the percentage of undergraduate students who are African American, Hispanic or Native American. This is exactly the variable the University of Michigan seeks to continue to manipulate by taking race into consideration during the admissions process. Step 3 of Gurin's models reveals what impact, if any, the proportion of "students of color" has on the correlations between the campus experience variables and final student outcomes. An examination of the nature of these relationships reveals why Gurin never discusses the correlations between structural diversity and the student outcome variables–the only correlations that, in the final analysis, are relevant to the issue before the court.

Nine-year outcomes

Gurin reports a statistically significant correlation between the percentage of minority students on a campus and participation and discussion of racial and ethnic issues nine years after graduation. The issue is how well PCTALL–the percent of all students who are minorities–predicts Discuss-Race. This impact is directly proportional to the size of the regression coefficient of PCTALL.

Instead of just controlling for all relevant student and campus characteristics, Gurin gives a dozen regressions for each race that rely on somewhat different sets of explanatory variables. In the 12 models where the sampled population consists only of white students, the coefficients of PCTALL are respectively: 0.0531, 0.0440, 0.0033, 0.0532, 0.0237, 0.00245, 0.0532, 0.0247, 0.0019, 0.0535, 0.0392, and 0.0029. The smallest coefficients, those around 0.003 (as opposed to those ranging from 0.02 to 0.05) occur in the four models in which institutional characteristics and those of students are subject to the most controls. These are the most inclusive models and the ones that best isolate the effect of PCTALL by controlling for other relevant factors. The first of the four models includes participation in an ethnic studies workshop. The second drops participation and uses campus discussion of racial issues instead. The third substitutes socialization with minorities while on campus as a control variable. The fourth uses racial diversity of close friends in college. Thus each of these four models involves 13 variables, 12 of which occur in all three.

The impact of coefficients of this magnitude depends on how the variables were coded. The relevant question on the CIRP survey was "Please indicate how often (**F**requently, **O**ccasionally, or **N**ot at all) you discussed racial/ethnic issues." Responses involved choosing **F**, **O** or **N**. In order to regress these responses on the 12 or 13 input variables, the responses must be coded numerically. In the absence of any explanation to the contrary, we would assume that "frequently" was coded as 2, "occasionally" as 1, and "not at all" as 0. The predicted value of the variable "discuss race" after controlling for 12 other variables is thus a score on an index that varies continuously from 0.000 to 2.000.

Gurin's model predicts that if the proportion of minorities goes up from 10 percent to 15 percent of all students, then the index of the variable - Discuss-Race would go up by 0.003 times 5 percent, which is an increase of only 0.015. More exactly, the predicted index increases for the four models are 0.0165, 0.012, 0.0095 and 0.0145%.

The highest of her three P-values (i.e. the one that is least significant) is 0.03, but this just means that one can assert with 97 percent confidence that the true value of the regression coefficient in this model is greater than 0. Using her data one can compute a 95 percent confidence interval for the sizes of the coefficients she estimates. The largest of these coefficients is 0.0033 with a standard error of 0.000892. It follows that a 95 percent confidence interval for the true value of this coefficient in this model is 0.0033 ± 0.00175 [0.0033 plus or minus 0.00175] Even if one used the upper bound of this confidence interval as an estimate for the true regression coefficient, a five percent increase in the proportion of minorities on campus translates only to an increase of 0.025 in the index value for discussing race 9 years after graduation.

Let us take another example. One of Gurin's 9 year "democracy" outcomes is post-college-socialization with members of other racial/ethnic groups (which we will call PCSOCIAL). In one of her models she uses as a predictor socialization-with-other-groups while in college (SOCIALIZ). The reported regression coefficient for whites is 0.254. The precise meaning of this coefficient again depends on how responses were coded. The question asked was how often the respondent socialized with someone of another racial/ethnic group. The possible responses were frequently, occasionally or never. The obvious way to code responses would be 2 for frequently, 1 for occasionally, and 0 for never. We can then conclude that P–the index for socialization after college– is 0.254 higher for the group that socialized frequently than for the group that socialized occasionally while in college. This index is also 0.254 higher for the group that socialized occasionally in college than for the group that never socialized with members of other groups. (It is an artifact of the model that these two numbers are equal.)

But the coefficients of PCTALL in Gurin's four most complete models are 0.00933, 0.00896, 0.00647, and 0.00791. This means that a change from 5 percent minority to 15 percent minority produces a predicted change of at most 0.09 in this index. This is scarcely a third of the change associated with moving from the never socialized while in college and the occasionally socialized while in college groups, and scarcely one-sixth of the change associated with moving from the never to the frequently socialized groups.

Four-year learning and democracy outcomes

We continue our discussion of Step 3 of Gurin's modeling–which reveals what impact, if any, the proportion of "students of color" has on the correlations between campus experience variables and final student outcomes–by looking at the four-year learning and democracy outcomes for white, black, and Hispanic students. Table 1 summarizes the relationships Gurin's analysis revealed between the proportion of students of color and the 23 learning and democracy outcomes for white students. Tables 2 and 3 do the same for black and Hispanic students. If the analysis revealed no statistically significant relationship it is coded as "NONE." If the analysis revealed a statistically significant positive relationship (at the 0.05 level), it is coded as "Positive." If a statistically significant negative relationship was revealed, it is coded as "Negative".

Table 1

Impact of increased structural diversity on student outcomes, white students

Learning Outcome Variables	Workshop	Discussion	Socialization	Close Friends
College GPA	NONE	NONE	NONE	NONE
Highest Degree Desired	NONE	NONE	NONE	NONE
Academic Ability (vs Peers)	Positive	Positive	Positive	Positive
Drive to Achieve	NONE	NONE	NONE	NONE
Self Confidence (Intellectual)	NONE	NONE	NONE	NONE
Writing Ability	NONE	NONE	NONE	NONE
Listening Ability	Positive	Positive	Positive	Positive
Write Original Works	NONE	NONE	NONE	NONE
Create Original Art	Positive	Positive	Positive	Positive
General Knowledge	Positive	Positive	NONE	Positive
Problem Solving Skills	NONE	NONE	NONE	NONE
Critical Thinking Skills	NONE	NONE	NONE	NONE
Writing Skills	NONE	NONE	NONE	NONE
Foreign Language Skills	NONE	NONE	NONE	NONE
Preparation for Grad/Pro School	NONE	NONE	NONE	NONE
Democracy Outcome Variables				
Influence Political Structure	NONE	NONE	NONE	NONE
Influence Social Values	NONE	NONE	NONE	NONE
Help Others in Difficulty	NONE	NONE	NONE	NONE
Clean Up Environment	NONE	NONE	NONE	NONE
Participate in Community Action	NONE	NONE	NONE	NONE
Promote Racial Understanding	NONE	NONE	NONE	NONE
Cultural Awareness	NONE	NONE	NONE	NONE
Acceptance of Different Races	NONE	NONE	NONE	NONE

Table 2

Impact of increased structural diversity on student outcomes, black students

Learning Outcome Variables	Workshop	Discussion	Socialization	Close Friends
College GPA	NONE	NONE	NONE	NONE
Highest Degree Desired	NONE	NONE	NONE	NONE
Academic Ability (vs Peers)	Negative	Negative	Negative	Negative
Drive to Achieve	NONE	Negative	Negative	Negative
Self Confidence (Intellectual)	NONE	NONE	NONE	NONE
Writing Ability	Negative	Negative	Negative	Negative
Listening Ability	NONE	NONE	NONE	NONE
Write Original Works	NONE	NONE	NONE	NONE
Create Original Art	NONE	NONE	NONE	NONE
General Knowledge	NONE	NONE	NONE	NONE
Problem Solving Skills	NONE	NONE	NONE	NONE
Critical Thinking Skills	NONE	NONE	NONE	NONE
Writing Skills	NONE	Negative	Negative	NONE
Foreign Language Skills	Negative	Negative	Negative	Negative
Preparation for Grad/Pro School	NONE	NONE	NONE	NONE
Democracy Outcome Variables				
Influence Political Structure	NONE	NONE	NONE	NONE
Influence Social Values	NONE	NONE	NONE	NONE
Help Others in Difficulty	NONE	NONE	NONE	NONE
Clean Up Environment	NONE	NONE	NONE	NONE
Participate in Community Action	NONE	NONE	NONE	NONE
Promote Racial Understanding	NONE	NONE	NONE	NONE
Cultural Awareness	NONE	NONE	NONE	NONE
Acceptance of Different Races	NONE	NONE	NONE	NONE

Table 3

Impact of increased structural diversity on student outcomes, Hispanic students

Learning Outcome Variables	Workshop	Discussion	Socialization	Close Friends
College GPA	NONE	NONE	NONE	Negative
Highest Degree Earned	NONE	NONE	NONE	NONE
Highest Degree Desired	NONE	NONE	NONE	NONE
Academic Ability (vs Peers)	NONE	NONE	NONE	NONE
Drive to Achieve	NONE	NONE	NONE	NONE
Self Confidence (Intellectual)	NONE	NONE	NONE	NONE
Writing Ability	Positive	Positive	Positive	Positive
Listening Ability	NONE	NONE	NONE	NONE
Write Original Works	NONE	NONE	NONE	NONE
Create Original Art	NONE	NONE	NONE	NONE
General Knowledge	NONE	NONE	NONE	NONE
Problem Solving Skills	NONE	NONE	NONE	NONE
Critical Thinking Skills	Positive	Positive	Positive	Positive
Writing Skills	Positive	Positive	Positive	Positive
Foreign Language Skills	NONE	NONE	NONE	NONE
Preparation for Grad/Pro School	NONE	NONE	NONE	NONE
Democracy Outcome Variables				
Influence Political Structure	NONE	Positive	NONE	NONE
Influence Social Values	NONE	NONE	NONE	NONE
Help Others in Difficulty	NONE	NONE	NONE	NONE
Clean Up Environment	Positive	Positive	Positive	Positive
Participate in Community Action	NONE	NONE	NONE	NONE
Promote Racial Understanding	NONE	NONE	NONE	NONE
Cultural Awareness	NONE	NONE	NONE	NONE
Acceptance of Different Races	NONE	NONE	NONE	NONE

Tables 1-3 make clear that for the vast majority of student outcome measures, Gurin found no statistically significant relationship between structural diversity and campus experience variables, on the one hand, and final outcome measures on the other. Only 50 of the 276 models listed above show any statistically significant impact of increased structural diversity on student outcome variables. Of these 50 statistically significant relationships , over one third (i.e., 18) revealed negative effects of increased structural diversity on student outcome variables, and the vast majority of the negative impacts– 17 of 18– were on black student outcomes.

Table 4 below summarizes the relationships between increased structural diversity and student outcomes from the previous four tables. It divides student outcomes into groups based on how increased structural diversity affects that particular campus experience variable. The results are: 9 Positive, 6 Negative, and the rest NONE. The table shows that increased structural diversity does not have consistent effects either in direction or across groups.

The first group of variables listed are those in which increased structural diversity is associated with better outcomes for at least one group

Table 4: Summary of impact of increased structural diversity on student outcomes

POSITIVE	**GAIN**	**LOSS**
Listening Ability	White	None
Create Original Art	White	None
General Knowledge	White	None
Critical Thinking Skills	Hispanic	None
Clean Up Environment	Hispanic	None
Influence Political Structure(?)	Hispanic	None
MIXED	**GAIN**	**LOSS**
Academic Ability (vs. Peers)	White	Black
Writing Ability	Hispanic	Black
Writing Skills	Hispanic	Black
NO EFFECT	**GAIN**	**LOSS**
Highest Degree Desired	None	None
Write Original Works	None	None
Problem Solving Skills	None	None
Critical Thinking Skills	None	None
Preparation for Grad/Pro School	None	None
Influence Social Values	None	None
Help Others in Difficulty	None	None
Participate in Community Action	None	None
Promote Racial Understanding	None	None
Cultural Awareness	None	None
Acceptance of Different Races	None	None
NEGATIVE	**GAIN**	**LOSS**
Drive to Achieve	None	Black
Foreign Language Skills	None	Black
College GPA	None	Hispanic

of students. The students who benefit are listed by race in the "Gain" column. The next group of variables is the mixed category, in which one group gains from increased structural diversity and another loses. The groups helped and hurt are listed in the "Gain" and "Loss" columns respectively. The next (and largest) group of variables are those in which there is no relationship between increased structural diversity and student performance for any group. Finally, the "Negative" group lists those variables where increased structural diversity hurts student outcomes. Those hurt are listed in the "Loss" column.

Table 4 shows that for 14 of 23 student outcome variables, increased structural diversity has either a negative impact on one or more groups or no effect at all. For three of the remaining nine variables, the impact is mixed. For only six of the 23 outcome variables is there a positive effect on either white or Hispanic student performance with no decline in the performance of students of another group

For 14 of 23 student outcome variables, increased structural diversity has either a negative impact on one or more groups or no effect at all. For three of the remaining nine variables, the impact is mixed.

Simply stating that there is a statistically significant positive effect for a small number of variables for some groups is insufficient. In order to assess the impact of increased structural diversity on student outcomes, it is also necessary to know how large (or small) the effects are of increased structural diversity on student outcome measures.

Although Gurin never gives the magnitude of the relationships her analysis discovered, it is easy to compute these magnitudes because her regression analysis predicts the impact that changes in structural diversity and other variables of interest (such as taking an ethnic studies class) would have on student outcomes.

Table 5
Regression coefficients, t-statistics, and significance levels
for white student four-year listening ability outcomes

Listening Ability Independent Variables	4 Point Scale Coefficient	t-Stat	Sig T
Ethnic Studies	0.0761	3.591	0.0003
Workshop	0.1417	6.354	0
Percent Minority	0.0058	4.442	0
Ethnic Studies	0.0693	3.267	0.0011
Discussion	0.1173	7.28	0
Percent Minority	0.0054	4.123	0
Ethnic Studies	0.0847	4.069	0
Socialize	0.1172	7.72	0
Percent Minority	0.0043	3.229	0.0012
Ethnic Studies	0.1004	4.849	0
Friends	-0.0375	-2.817	0.0049
Percent Minority	0.00559	4.182	0

Let us pick the best case for Gurin (by her own standards): one where there is a statistically significant positive relationship in *all four* of her models between taking an ethnic studies course (what she calls "classroom diversity"), three of four "campus experience" variables, and increased structural diversity and an outcome variable. One example is the four-year listening ability outcome for white students.[75,76]

Table 5 lists the regression coefficients, t-statistics and significance values for white students for the four-year listening ability outcome variable from Gurin's regression analysis. Any coefficient with a t-statistic with an absolute value greater than or equal to 1.96 is considered statistically significant. The probability that such a coefficient is actually zero is less than 0.05, or 5 percent. The larger the t-statistic the lower the probability that the actual value of the coefficient is zero. The Sig T column lists the probability that each coefficient is zero based on its t-statistic. In Table 5 all of the coefficients have t-statistics with absolute values greater than 1.96, and Sig T values of 0.05 or less. So, all of these coefficients are considered to be statistically significant. But what do they mean in practical terms?

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[75] See line 7 of Table 1 above and Gurin 1998: Table D.2 p.2 of 12.

[76] There were no instances where all campus experience variables and the structural diversity variable were significant and positive for any four-year outcome variable.

Let's look at the workshop model. Imagine that a university offers a voluntary ethnic studies class and a voluntary ethnic workshop. Students attending this university can engage in various levels of discussion of racial issues, and socialize and make friends with people of different races at different rates. Assume that 10 percent of the university's students are minorities. Gurin's "workshop" regression analysis tells us that, on average, if a student at this university decides to take an ethnic studies class, the student's listening ability score (on a scale of 0 to 4) rises by 0.0761, or about two percent. If the same student also takes the workshop, the model tells us that his or her score rises by 0.1417, or about 3.5 percent. These effects are additive, so if a student engages in both activities, he or she can expect about a 5.5 percent increase in listening ability.[77] In addition, Gurin's model predicts that for each additional one percent of the student body that consists of minorities, a white student's listening ability will improve by 0.0058 on the four point scale, or about 0.145 percent; i.e., 14 hundredths of one percent. So for our college where 10 percent of the student body is minority, the average white student's listening ability would improve by 10 times 0.145 = 1.45 percent compared to a hypothetical college with an entirely white student body. A white student at our hypothetical university who takes both the ethnic studies class and the workshop can expect to have listening skills about 7 percent better than a student who took neither the class nor the workshop at a hypothetical school with no minorities. These relationships hold regardless of changes in any of the variables Gurin controlled for in her model, such as SAT score, high school GPA, student's gender, selectivity of the school, etc.[78] These relationships hold true regardless of the levels of the variables.

For 14 of Gurin's 23 student outcome variables increased racial diversity has either a negative impact on one or more groups or no effect at all. For three of the remaining nine variables the impact is mixed. For only six of the 23 outcome variables is there a positive effect on either white or Hispanic student performance with no decline in the performance of students of another group.

Thus, if a student took the ethnic studies class, but not the workshop, his or her listening ability would still improve by about two percent. Similarly, if the percentage of the student body that is minority falls from 10 to 5 percent, taking a workshop would still improve the student's listening ability by 3.5 percent. In other words, Gurin's analysis shows that, in those cases where "Took an Ethnic Studies Course" and the other "campus experience" variables improve student outcomes, *their effects are independent of the fraction of students that are minority.*[79] In fact, by structuring her analysis as she did, she explicitly assumes that structural diversity and campus experience variables have *independent* effects. The results she calculated for her campus experience variables were deliberately calculated to be valid at any level of structural diversity.

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[77] Contrary to the impression Gurin gives in her report, it is the small size of the effects she is looking for, and not inadequate sample size, that limits her ability to detect effects for black and Hispanic students in the CIRP database. Although Gurin tells us several times that the CIRP database she used contained data on 9,316 students, she does not tell us the proportion of black and Hispanic students in the samples she used. The conservative assumption that at least 5 percent of the students in the overall database were black and 5 percent Hispanic would give Gurin a sample size of 465 for each group. This is larger than the samples used in much social science research and in any case is large enough to detect effects of any practical significance for purposes of public policy making.

[78] See Gurin Appendix C pages 13-14 for a complete list of the variables she controlled for in her models.

We have previously observed that most of Gurin's variables are soft student self-assessments. Students' self-evaluated listening ability is so vaguely defined as to make the small changes predicted by a model especially meaningless. Student attitudes that cause them to take these courses or to participate in such workshops are probably more responsible for any apparent effects then the courses or workshops themselves. Some evidence for this claim can be found in the relative magnitudes of Gurin's reported coefficients, which, if taken seriously, would show that the impact of a single workshop (involving at best a couple of hours) is almost twice that of taking a whole course. More specifically, the coefficient for taking a workshop is 0.14, that for taking an ethnic studies course for an entire semester is 0.076.

Gurin's 1985 CIRP variables do not sufficiently control for political and other attitudes that may predispose students to take certain courses, or to engage in certain activities. The 1994 CIRP questions (on which Chang relies) provide much better controls for characteristics that students bring to college, or which predispose them to chose a certain college. The Michigan survey ("The Undergraduate Experience at Michigan") does include numerous items like religious affiliation, whether the respondent is religious, campus activities (including religious, fraternity, student government, and athletic participation), hours worked, personal and political attitudes, and many others. But, of course, data at any one institution cannot be used to estimate the effects that may arise from varying percentages of minorities on different campuses.

Gurin's analysis shows that even when compared to the modest impact of campus experience variables on student outcomes, the impact of structural diversity as measured by the percentage of minority students is very small. To take the example just given, suppose that the university decided to stop taking race explicitly into consideration in its

Suppose that a university decides to stop taking race into consideration in its admission practices, and that the fraction of non-white - Asian students falls by 50 percent from 10 percent to 5 percent. What impact would this have on the (self-reported) white student listening ability outcome? Gurin's results predict that white student listening ability would decline at this institution by 5 x 0.145 = 0.725 percent, or about seven-tenths of one percent.

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[79] These conclusions, which are the only valid reading of her regression analysis, directly contradict the assertions Gurin makes about the role of structural diversity between pages 31 and 35 of her report. One can only assume the correlations presented in Table 1 on page 32 and the data presented in Figure 2 do not control for the student background and institutional characteristics variables listed on pages 13 and 14 of Appendix C of Gurin's Expert Witness Report. Therefore, these earlier assertions are subject to a variety of biases and errors that are controlled for in the regression models, and should be regarded with great suspicion.

admission practices, and that the fraction of minority students falls by 50 percent from 10 percent to 5 percent. What impact would this have on the (self-reported) white student listening ability outcome? On average, Gurin's results predict that white student listening ability would decline at this institution by 5 x 0.145 = 0.725 percent, or about seven-tenths of one percent.

The results for the "Discussed Race," "Interracial Socialization," and "Close college friends were diverse/same" models can be calculated in a similar way. In general, the coefficients are very similar in magnitude to the workshop model and the results will be very similar for the other three models. The notable exception is the "Close college friends were diverse/same" model, which predicts that for white students an increase in the proportion of friends from other racial/ethnic groups leads to a small *decrease* in listening ability. Results for other outcome variables can be calculated in a similar manner.

Thus, about 88 percent of Gurin's models show that there is either no relationship, or a negative relationship, between structural diversity and both learning and democracy outcomes. In those few cases where structural diversity does have a positive impact on learning or democracy outcome variables, its impact is extremely small, as illustrated by the example above.

In addition, her results show that any positive effects of campus experience variables such as ethnic studies courses and workshops are independent of structural diversity. In other words, the effectiveness of ethnic studies courses, workshops, etc. remains the same no matter what the percentage of students that are minority at a particular school, or how that percentage changes over time.

We know from Gurin's regression tables that the effectiveness of ethnic studies courses, workshops, etc. remain the same no matter what the percentage of non-white - Asian students is at a particular school, or how it changes over time.

From our examination of the 850 pages of regression tables we were able to obtain, our impression is that this is true for all the other student outcome variables in the Gurin/Dey CIRP database (i.e., besides the 15 learning and 8 democracy outcomes that are included in her tables). Take, for example, the College Satisfaction variable. This variable is of interest because it throws additional light on the survey findings we reported in Part III of this report. There we mentioned that the Zogby/FAST survey found that students are overwhelmingly opposed to racially preferential university admissions policies. On the other hand, defenders of preferences can cite this survey (and others) in support of the proposition that students value racial diversity, and that they believe that campus racial diversity is important to higher education. At this point, an outside referee might conclude that the debate is moot. This, however, would be a mistake, because the question is an empirical one that can be addressed in a perfectly straightforward way through multivariate regression analysis, provided that the database includes measures of college satisfaction. As it turns out, the CIRP database includes this measure.[80]

We already know, from Astin 1993c: 362, that there is no educationally significant correlation between structural diversity and the College Satisfaction outcome variable. (If there had been, Astin would have reported it.) But the Gurin/Dey regression tables we obtained permit us to significantly strengthen this conclusion. In particular, they have enabled us to test the hypothesis that increased structural diversity will, in conjunction with what Gurin calls the "campus experience variables" (e.g., taking an ethnic studies course, discussing racial issues) have a positive impact on final student outcomes. The tests tell us to reject this hypothesis. We summarize the results in the following tables:

In sum, Gurin wants the University of Michigan to continue to trample on the Fourteenth Amendment rights of every applicant by explicitly considering his or her race in its admission decision in order to increase structural diversity, even though her own analysis shows: (1) few instances of positive effects of structural diversity on either learning or democracy outcomes; (2) very small (and educationally insignificant) effects where the correlations are positive and statistically significant; and (3) no connection between structural diversity and "campus experience" variables such as ethnic studies courses, workshops, etc.

Overall Satisfaction: four-year study

	Workshop	Discussion	Socialization	Close Friends
White	NONE	NONE	Negative	NONE
Black	NONE	NONE	NONE	NONE
Hispanic	NONE	NONE	NONE	NONE

Overall Satisfaction: nine-year study

	Workshop	Discussion	Socialization	Close Friends
White	NONE	NONE	Negative	NONE
Black	NONE	NONE	NONE	NONE
Hispanic	NONE	NONE	NONE	NONE

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[80] See item 10 of the FUS, Wingard et al. 1989: 205.

Gurin's Expert Testimony Fails to Meet the Standards for Research Reports in the Peer-Reviewed Scholarly Literature

Gurin's "Expert Testimony" fails to report data that would be included in a scholarly research article

If we had access to the CIRP data set, we could report the estimated values themselves, not just the changes arising from different levels of the percentage of minority students. We could report, for example, something like the following: for white female students with a B+ high school grade point average, an SAT total of 1200, who had almost no minority friends in high school but who socialized with minorities in college, etc. (eight more variables), the index for discussing race after graduation is .820 if they went to a college with only 10 percent minorities, and is .835 if the proportion of minorities was 15%. We repeat that the 0.820 is a made-up number; we would need access to the data to know what number is actually predicted by this model. But the difference, according to Gurin's own model, that is made by a change from 10 percent to 15 percent minority is what we have calculated: 0.015.

The difference according to Gurin's models between a campus that is 5 percent minority–a combined proportion of blacks, Asians and Hispanics almost certain to be exceeded without racial preferences–and one with 25 percent minority is a change of 4 times that computed above; i.e., around 0.06 in the discussed race index–hardly a dramatic change.

This data would ordinarily be reported in a scholarly research article. But its omission is a particularly serious matter given the claims that Gurin has made, for while racial preferences can be used to increase racial diversity on a campus, some degree of racial diversity will normally be attainable in their absence.

Gurin fails to report the criteria she used in selecting the variables and samples of institutions she uses

The value of coefficients depends both on what other variables are included in a model and on the population being studied. For example, given a population of grade school boys, one could predict weight from any of the three variables height, age or shoe size (ignoring width; i.e., coding size 8B as just 8). It would turn out that if one regressed weight on age alone (used age to predict weight), the coefficient for age would be highly significant. If one regressed on shoe size alone, the coefficient of shoe size would also be significant. Each of the three explanatory variables looked at by itself would have a statistically significant regression coefficient. However, if one combined the three variables into one model, one would probably find that only the coefficient of height was significant, either statistically or practically. If one knows a boy's height, additional information on age and shoe size does not materially improve the accuracy with which one can predict his weight. Thus shoe size and age are significant by themselves, but not when one includes the more appropriate variable of height.

The effect of the population being studied can be seen if one looks at the same variables in a population of men in their 20's. One might then find that age is of no value in predicting weight, and that shoe size is a much weaker predictor than in a population of young boys. Of course, height would still be the best predictor.

Gurin recognizes that different populations can yield different regression coefficients when she analyzes data separately for each race. But this recognition adds force to her failure to explain or justify the selection of her data set, which consists of a relatively small part of the data previously analyzed by Astin. Gurin reports that she dropped historically black colleges from the analysis. If it turned out that– all else being equal–minority students do better at such schools, her case would be weakened. Gurin also dropped two-year institutions from the analysis, without explaining why.

If they were given access to the databases, researchers might be able to assess the impact of racially preferential admissions policies

If we had access to the CIRP data, we could pursue various threads suggesting that there are negative effects associated with a system of racial preferences. CIRP does not contain any pure measure of racial preference on campuses, but a reasonable measure might be the difference between the SAT scores of whites and blacks on a campus. If we had access to the CIRP data set, we might be able to utilize external data on the racial SAT gap at various schools, and then assess the impact of this measure on Gurin's outcome. The best proxy that we have in the existing data set for the degree of racial preference might be the selectivity of a school (measured by the average SAT scores of admitted student), because more selective schools tend to grant a greater degree of preference to minorities on the SAT. (Of course, many schools admit virtually all applicants with a high school diploma, but while these schools may put more effort into recruiting blacks than whites, they do not discriminate by race in admissions.)

Astin (1993c: 51) reports that there is a very substantial correlation (0.39) between selectivity and racial conflict. It is conceivable that the explanation has something to do with the tensions caused by racial preferences at the more selective schools. We do not claim that this one correlation provides proof of this thesis. We are simply pointing out that only one side has had access to the data.

Release the database!

HERI was, in effect, a cooperating organization in the production of Gurin's expert testimony. This is not the first time that HERI has cooperated with like-minded organizations in the defense of racially discriminatory university admissions policies. HERI did so as well for the Mellon Foundation. This foundation used the CIRP database (and not just regression tables generated from the database) in the College & Beyond study that is the basis of William Bowen and Derek Bok's book *The Shape of the River*.[81] This renders any refusal on the part of the University of Michigan to release its database (or any future refusal by HERI to release the entire database) even more untenable.[82]

It is a disturbing departure from standard research practice for a database of this size and importance to have gone so long without having been made available to other researchers in the field, who would then be in a position to peer review studies and analyses based on it. The failure to release the database to the general research community is rendered more inexcusable by the fact that HERI has already turned the database over to universities and foundations that it regards as ideologically sympathetic. This is even more outrageous than a blanket refusal to release the database to anyone. As it is, it appears that the database is being made available *only* to organizations that are deemed to be ideologically sympathetic. In short, there appears to be selective bias at work here.

For the reasons we have given, it is very hard for us to imagine how the defenders of racially preferential admissions policies can believe that the CIRP database, or any of the studies that have been based on it to date, can be at all helpful to their cause. We would not be surprised to see universities and the higher education establishment at One Dupont Circle simply drop references to the CIRP findings in the future. If they do not, however, courts, the research community, and the general public must insist that the full database be made available to the entire research community, with no questions asked about the ideological orientation of the researchers who might wish to have access to it.

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[81] Bowen and Bok 1998: 94n8, 147, 294, 313, 338.

[82] "As with the data from the College Entrance Examination Board, records were matched by HERI using an algorithm that protected the confidentiality of the records." (Bowen and Bok 1998: 314.) This means that one can dismiss in advance any concerns that HERI might express about maintaining the confidentiality of its database, since HERI has already found an algorithm that it feels provides adequate confidentiality. There are in fact standard methods and algorithms for the generation of "statistical databases" (Denning and Schlörer 1983, Adam and Wortmann 1989, Tendick and Matloff 1994).

Gurin's Assertion That Statistical Significance Is a "Basic Indicator of the Strength" of Her Relationships Is a Fundamental—and Rather Elementary—Statistical Error

Gurin misleadingly or carelessly asserts (Appendix C, p. 2) that a "basic indicator of the strength of these relationships with the outcome measures is found in the assessment of its statistical significance." On the contrary, statistical significance is not a measure of the strength of a relationship; it is instead a measure of the probability that an effect of the apparent size could arise purely from chance variation in the selection of the sample. Statistical significance depends both on the intrinsic strength of an alleged effect and also on the sample size.

For example, suppose one took a poll and found that when asked a certain question, 62 percent of men and 60 percent of women said "yes." Most people would interpret this as meaning that there was no evidence of any meaningful sex difference. While the difference between 62 percent and 60 percent is insignificant in most cases, it can be *statistically* significant if the samples are large enough.

The distinction between practical and statistical significance, between the size of an effect and the probability tha an apparent effec is due to chance, is a standard topi in elementary sta- tistics courses.

If the poll had used samples of 10,000 men and 10,000 women, the observed difference of 2 percent would be highly significant statistically, with a P-value of 0.0039 (i.e., 39 hundredths of one percent). This does not mean that the difference of 2 percent is important, but only that it cannot be explained by the luck of the draw, i.e., by who happened to be included in the sample. In this case one has reliable evidence of the existence of a small but real sex difference in responses.

But if the sample sizes were 100 men and 100 women, the P-value would be 0.77. This means that even if the true proportions of all men and all women ("all" means the entire population, not just those who happen to be included in the samples) who would say "yes" are identical, there is a 77 percent probability of choosing samples in which the observed difference will be 2 percent or more. The large P-value means that there is considerable doubt as to whether there is any sex difference at all.

The distinction between practical and statistical significance, between the size of an effect and the probability that an apparent effect is due to chance, is a standard topic in elementary statistics courses. One well known text explains the difference as follows:

> If a difference is statistically significant, then it is hard to explain away as a chance variation. But in this technical phrase, 'signifi-

> cant' does not mean 'important.' Statistical and practical significance are two different ideas. . . .[83]
>
> The P-value of a test depends on the sample size. With a large sample, even a small difference can be statistically significant, that is, hard to explain by the luck of the draw. This doesn't necessarily make it important. Conversely, an important difference may not be statistically significant if the sample is too small."[84]

Gurin's Models Fail to Control Simultaneously for All Student Characteristics

The sheer size of Gurin's analysis–850 pages of statistical printouts–may convey the impression that she has left no stone unturned. But her procedure is really designed to obscure the fact that the percentage of racial minorities on a campus has few if any discernible beneficial effects on her outcome measures, and probably no statistically significant effects at all. Gurin's obvious procedure would be to run a single regression for each of the outcome variables against all 16 of her explanatory variables. That is, instead of having 12 regressions (12 models) for each of her outcome variables for each of the three races, she would have only one for each race. Instead of 850 pages of printouts she would have only 70 pages.[85]

Instead she first regresses an outcome variable against five pre-college variables ("student characteristics"): high school grades, SAT, sex (female coded as 1, male as 0, we think), and two pre-college ethnic variables (proportion of high school classmates and of neighbors who were of the same race or ethnicity). She then appears to have looked at the coefficient for each of 8 additional variables if added singly (without any of the others) to the list of predictors. This procedure would be justified (as a first step in an exploratory data analysis) if her intention had been to discover which of these potential explanatory variables would be used in the final analyses. But since she doesn't eliminate any variables, she merely produces printouts for models in which some explanatory variables are omitted. If an omitted variable is correlated with one or more variables included in the regression, the omission will have the effect of falsely ascribing effects to included variables that should really be ascribed to omitted ones.

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[83] The authors then describe a hypothetical example–similar to the one given above– in which the difference between two groups is statistically significant because of the large sample size, but too small to have practical consequences.

[84] Freedman, D. , R. Pisani and R. Purves 1998: 554.

[85] If she wanted to facilitate evaluation of her claims, she would also have included other statistics, such as R^2– the percent of variance explained by the model, which is part of the standard output of regression programs. She would also have included summary statistics for her input measures that would, among other consequences, enable others to be sure how her variables were coded.

In a second series of models she adds taking an ethnic studies course and one other variable to the five and computes the coefficients for this model, after which she adds each of the remaining variables singly (without any of the others). Again this only makes sense if she intended to start a forward regression whose purpose was to select which variables would be used in the final analyses.

Finally, she regresses her outcomes against all but three of her variables, varying the omitted ones. This procedure has no statistical justification, in spite of her rhetorical flourishes in which she gives names to the various models (workshop, discussion, socializing, and racial diversity of close friends). All she is doing is leaving out relevant variables.

Had Gurin used Astin's full data set and full set of variables, she would necessarily have duplicated his results.

Why does she resort to these convoluted procedures? The most likely explanation is that when she experimentally included all 16 explanatory variables in a single regression, the coefficient for percent minority (PCTALL) was never (or practically never) statistically significant. She therefore decided to use models that utilize only one of the four variables, (workshop, discussion, socializing, close college friends are diverse) at a time. The apparent effect that she ascribes to PCTALL is most likely an artifact that arises from the omission in each of her models of at least three of these four variables.

Had Gurin run her regressions with all 16 explanatory variables simultaneously present, she would probably have duplicated Astin's results, which showed that PCTALL doesn't have any statistically significant beneficial effects on any of the outcome variables for members of any racial group. Had she used Astin's full data set and full set of variables, she would necessarily have duplicated his results.

Gurin claims that her results provide a

> conservative estimate of diversity's effects, in that the analyses consistently allow other variables in the analysis (i.e., characteristics of colleges and entering characteristics of students) a greater opportunity to account for, and possibly explain away the influence of diversity on college students. . . . Despite the fact that this approach tends to diminish the likelihood of demonstrating effects related to diversity, it is important to take these relationships into account in order unambiguously to demonstrate change related to diversity. In sum, this approach ensures that where I report significant effects related to diversity, they are truly diversity effects, as opposed to being consequences of

the characteristics, choices and preferences that students bring with them to college.

Gurin claims to be generously stacking the deck against her own hypotheses. But her analysis would have had no credibility at all if she had made no effort to take into account student characteristics that predate their enrollment in college and characteristics of the institution other than the proportion of minority students. Furthermore, as stated above, her finding of significant (though small) diversity effects rests on her failure to use models in which all explanatory variables are simultaneously present.

Gurin's finding of significant (thoug small) diversity effects rests on her failure to use models in which all explanatory variables are simultaneously present.

A standard topic in elementary statistics courses is the difference between correlation (or association) and causation. To say that C causes D means that if one could change only C (without changing other relevant factors), then D would also change. A famous example, ironically cited during the prohibition era, was the high correlation between the price of rum in Havana and ministers' salaries in Boston. The source of the correlation was of course that both were being influenced by the same broad economic trends (prosperity and inflation). If, due to the normal workings of the economy, ministers' salaries rose, one could validly predict that the price of rum had gone up or would go up. But if a multimillionaire had intervened to award raises just to Boston clergy, the price of rum would not have been affected. Changing just this one variable while all else remained constant would not have affected the price of rum. While there is an association between these variables, the relationship is not causal.

Multiple regression models are often, though not always, able to disentangle these effects. Thus if one regressed rum prices on the average salaries of ministers, the regression coefficient would be not only statistically significant but large enough to enable one to make useful predictions. On the other hand, if one included economic variables on overall price levels, the coefficient for ministers' salaries would probably shrink to both practical and statistical insignificance.

Much of Gurin's analysis is impeached by a failure to account for obvious variables that would readily provide alternative explanations for her findings. In spite of Gurin's assurance that she is generously taking other explanations into account, she presents some tables which completely (as opposed to inadequately) fail to do so. Thus figure 2 (p. 33) of the Expert Report is labeled "structural diversity effects on interracial contact patterns after college among white students raised in predominantly white neighborhoods." According to the graph, for white students who attend the least diverse colleges (percent minority 0 to 9%), only 10 percent have diverse current friends, only 21 percent have diverse current neighbors and only 24 percent have diverse current coworkers. However for students who attend the most diverse colleges (more than 25 percent minority), these percentages are respectively 26, 35, and 40. The size of these effects is vastly greater than those that Gurin claims to have found in her regressions, so one can be sure that the apparent effects are traceable to other student characteristics. Is it really plausible that recent graduates starting on careers and seeking places to live would make choices that are seriously influenced by the number of minority employees in a firm and the number of minority residents living in a neighborhood? Do those who seek jobs and apartments have so many choices that they can select jobs and apartments on the basis of these criteria as opposed to salary, opportunity for advancement, location, transportation, and rent?

Since Gurin's data has not been made widely available to the research community, it is impossible to verify or definitively determine what accounts for the numbers she reports, but plausible speculation still reveals the shakiness of her argument. Diversity of friends, neighbors, and coworkers are defined in a footnote as meaning that more than half were non-white–a rather unusual circumstance in most of the U.S. A student who attends a low diversity college would be more likely than most students to live in a state like Nebraska or Oregon or Wyoming, where there are relatively few minorities. Unless the student moves to a big city after graduation, he would find it hard to be in a situation where literally most of his friends, neighbors, and co-workers were non-white. On the other hand, those students who attend colleges that are more than 25 percent non-white probably also live in areas with sizable non-white populations. These students are likely to have minority friends, neighbors, or co-workers, just as a matter of local demographics, and not because they actively sought to do so and not because they went to a college that was 25 percent minority.

THE SUPPLEMENTAL EXPERT REPORT OF PATRICIA Y. GURIN (11 January 2001)

The National Association of Scholars raised some of the foregoing points in the amicus brief that it filed in the *Gratz v. Bollinger* litigation.[86] In particular, the NAS pointed out there that the CIRP database found no educationally significant correlations between campus racial diversity and educational outcomes. We also pointed out that in the light of these findings, any claims about what Gurin calls "campus experience variables" are beside the point.

Gurin has replied to the NAS brief in a court document.[87] There Gurin has asserted that *we* have argued that the alleged benefits do not require the presence of minority students. She also protests that we accuse her of having treated enrollments in ethnic studies courses as an "adequate proxy" for racial diversity.

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[86] National Association of Scholars (14 July 2000).
[87] Gurin, P. (11 January 2001).

As to the first point: What the NAS actually argued was that the University clearly has the burden of showing whether, or to what extent, the four "campus experience variables" that Gurin studies require institutional campus diversity in order to function in the way she believes they do. Thus far the University has not produced this evidence, and we can infer from Gurin's reply to the NAS brief that it is in no position to do so. Indeed–and quite incredibly–the University has explicitly *refused* in court to specify the degree of racial diversity that it believes is required to produce the alleged educational benefits. This means, in effect, that we do not even know whether the *University of Michigan* believes that its racially discriminatory admissions policies are necessary to produce the alleged educational benefits!

Incredibly, the University has explicitly refused in court to specify the degree of racial diversity that i believes is required to produce the alleged educational benefits. This means, in effect, that we do not even know whether the University of Michigan *believes that its racially discriminatory admissions policies are necessary to produce the alleged educational benefits!*

As to the second point: Gurin has apparently misunderstood the underlying thrust of our argument, which has the form of a reductio ad absurdum. Our point has simply been that Gurin's findings about the "campus experience variables" could prove that the University's discriminatory policies meet the compelling state interest test in court only if these variables *were* an adequate proxy for campus racial diversity. Since they obviously cannot be, the whole argument fails. Now, however, we finally have a public admission from Gurin that her four campus experience variables cannot be treated as adequate proxies for the only input variable that could possibly be of interest to the court, i.e., the racial diversity of the institution. Her recent admission now raises in the sharpest possible form the following question: Why does Gurin treat the campus experience variables as the primary object of her study, rather than the racial diversity of the institution?

Nothing that Gurin says in her reply to the NAS' amicus brief even begins to address this question. After all, one does not have to go looking for "adequate proxies" in this case at all, whether it be interracial on-campus socializing, ethnic studies courses, or anything else, since the CIRP database which Gurin herself uses has not one but three variables that designate the very thing of interest–i.e., the racial diversity of the institution, or what Astin calls the racial composition of the peer group. And what we know from Astin and from subsequent studies at HERI is that one cannot assert that the racial diversity of a campus is correlated in any educationally significant way with positive educational outcomes when one properly controls for possibly confounding variables such as Gurin's four "campus experience variables." And that, so far as the question before the courts is concerned, is the end of the matter.

Gurin also claims in the "Supplemental Expert Report" that her work "demonstrated a remarkable consistency in results."

However, since the results she finds are for variables that cannot, even by her own admission, be treated as adequate proxies for the one and only input variable that could possibly be of interest to the courts, this remark is entirely beside the point.

Here, too, the enthymeme of her argument has to be that her findings about the "remarkable consistency" of the impact of "campus experience variables" shows something indirectly about the impact of structural diversity on outcomes (although she never tells us what that is). But why all this indirection? It is pointless and misleading for the University to ask us to eyeball findings about variables that are not at issue in the litigation and to deem them "remarkably consistent," and then to ask us to make wholly unsupported and unsubstantiated inferences about the meaning of these correlations for the real variable of interest, when there is a *direct* test of the hypothesis in question which the University entirely ignores: indeed, it is a test that Astin had run nine years earlier in his comprehensive analysis of the same database!

Why does Gurin treat the campus experience variables as the primary object of her study, rather than the racial diversity of the institution?

In order to test the one hypothesis or claim that is of relevance to the court, one does not have to eyeball anything or make any decisions about when a pattern of findings is "remarkable" or not, since the CIRP database itself allows us to test the hypothesis that is at issue in the litigation *directly*: one simply tests for correlations between racial diversity and educational outcomes with models in which other explanatory variables are properly controlled. When one does that, however, it turns out that the findings tell us to *reject* the University's claims.

THE HON. PATRICK J. DUGGAN'S OPINION IN *GRATZ V. BOLLINGER*[88] (13 DECEMBER 2000)

On December 13, 2000, Judge Patrick J. Duggan of the U.S. District Court of Eastern Michigan issued a ruling and opinion upholding the University of Michigan's current race-based admissions policies. Perhaps the central contention on which this opinion and ruling was based was the following: "The University Defendants have presented this Court with solid evidence regarding the educational benefits that flow from a racially and ethnically diverse student body."[89]

Among the documents cited by Judge Duggan in support of this claim were briefs filed in the case by the United States Department of Justice, the Association of American Law Schools, and the American Council on Education:

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[88] Duggan Opinion.
[89] Ibid., p. 21.

> A number of amici have filed briefs concurring with the University that diversity results in a richer educational experience for all students. In support of its position, the United States cites a study by Alexander Astin, Director of the Higher Education Research Institute at the University of California, in which Astin associates diversity with increased satisfaction in most areas of the college experience and an increased commitment to promoting racial understanding and participation in cultural activities, leadership, and citizenship. (U.S. Br. at 20-21; *see also* ALS Br. at 6; ACE Br. at 15).[90]

The implication that the AALS, the ACE, and the United States have claimed that *Astin's* study supports the view that "diversity results in a richer educational experience for all students" is incorrect. A perusal of the passages cited by Duggan clearly shows that these amici were, if anything, very careful to *avoid* making this claim. Furthermore, we know from p. 362 of Astin's major study that they could *not* have made this claim (at least so far as Astin is concerned), because Astin found that the database tells us to *reject* this hypothesis.

The amicus briefs cited by Judge Duggan cite two publications by Astin: a 1993 article in *Change* magazine and *What Matters in College?* Since the magazine article is only a popularization of the findings that are fully reported only in the book, it suffices to quote the relevant passage from the latter:

> The study also included several indicators of the individual student's *direct experience with diversity activities* [emphasis ours]: taking women's or ethnic or Third World courses, participating in racial or cultural awareness workshops, discussing racial or ethnic issues, and socializing with someone from another racial or ethnic group. ...One other student outcome that is positively associated with *individual diversity activities* [emphasis ours] .... is political liberalism. ... In short, the weight of the empirical evidence shows that the actual effects on student development of *emphasizing diversity* [emphasis ours] and of *student participation in diversity activities* [emphasis ours] are overwhelmingly positive. .... [T]he findings of this study suggest that there are many developmental benefits that accrue to students when institutions encourage and support an *emphasis* [emphasis ours] on multiculturalism and diversity."[91]

Note that whereas Duggan attributes to Astin the view that racial *diversity* results in a richer educational experience for all students, Astin makes the quite different claim that "direct experience with diversity

Note that where Judge Duggan a tributes to Astin the view that racial diversity *results in a riche educational expe rience for all students, Astin makes the quite different claim th "direct experienc with diversity activities," " emphasizing diversity," and "student particip tion in diversity activities" are co related with (some) positive educational outcomes.*

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[90] Ibid., p. 22.

[91] Astin 1993c: 431.

activities," " emphasizing diversity," and "student participation in diversity activities" are correlated with (some) positive educational outcomes. *Pace* Judge Duggan, the amici make only the latter claims, not the former one.[92]

That is why the National Association of Scholars asserted in the brief that it filed in the case that "Neither of these sources [i.e., neither the AALS nor the ACE brief] claims that campus racial diversity (much less campus racial diversity achieved through racial preferences) improves academic outcomes." The NAS also pointed out, in a passage that Judge Duggan does not cite, that the "University's amici ignore that portion of Astin's work that directly addresses the question at hand" (NAS Br. at 7)– i.e. the portion that finds no correlation between racial diversity and educational outcomes.

Judge Duggan noted in his opinion that the NAS specifically took issue with the studies relied upon by the American Association of Law Schools, contending that suc studies really report that 'outcomes are generally not affected' by racial diversity on campus (NAS Br. at 7). Judge Dugga never disputes this claim in his opinion.

Perhaps Duggan confused the question whether diversity *experiences* are correlated with positive educational outcomes with the very different question whether the racial composition of the student body is so correlated. It is only research addressing the *latter* question that can answer the empirical question that is engaged by the present litigation. It only stands to reason that what Astin calls "diversity activities" are at best very weakly correlated with the racial diversity of the student body. But one need not rely on a priori considerations here. We *know* that racial diversity and these campus experience variables are imperfectly correlated, even within the very database that is at issue here, because, while Astin found that diversity activities are correlated in the database with at least some positive outcomes, he also found that the crucial variable–the racial composition of the student body–is not.

Duggan noted in his opinion that the NAS specifically took issue with the studies relied upon by the American Association of Law Schools, contending that such studies really report that 'outcomes are generally not affected' by racial diversity on campus (NAS Br. at 6-7)."[93] *Judge Duggan never disputes this claim in his opinion.* This is quite inexplicable on the merits, since the University's defense collapses completely if outcomes are *not* affected by racial diversity on the campus. This lapse in the argument can only be explained if one assumes that Duggan took the question whether diversity *activities* are connected with positive educational outcomes to be the same thing as the question whether the racial diversity of the student body is. But clearly, they are not the same thing.

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[92] E.g., the United States Br. at 20-21 mentions three factors studied by Astin: (1) institutional diversity emphasis, including a commitment to increasing the number of minority faculty and students; (2) multiculturalism in the general education curriculum, and (3) direct student experience with diversity, including taking ethnic studies courses, attending cultural awareness workshops, socializing with other-race students and discussing racial issues with peers. The passage cited by Judge Duggan says nothing about racial diversity itself. The same is true for the passages cited by Duggan from the other two briefs.

[93] Duggan Opinion: 25.

There can be no doubt that Judge Duggan correctly attributed to the University Defendants the claim that there are "educational benefits that flow from a racially and ethnically diverse student body"[94], for there is simply no other way of reading the following passage from Gurin's Expert Witness Report:

> A racially and ethnically diverse student body has far-ranging and significant benefits for all students, non-minorities and minorities alike. Students learn better in a diverse educational environment, and they are better prepared to become active participants in our pluralistic, democratic society once they leave such a setting.[95]

What Judge Duggan missed, however, is that Gurin fails to show anything of the sort. Indeed, in a response to the NAS' brief dated January 11, 2001 (i.e., after the Duggan Opinion was issued), Gurin clearly recedes from this claim:

> Structural diversity [her own term for racial diversity] is essential but, by itself, usually not sufficient to produce substantial benefits; in addition to being together on the same campus, students from diverse backgrounds must also learn about each other in the courses that they take and in informal interaction outside of the classroom. *For new learning to occur, institutions of higher education have to make appropriate use of structural diversity.* (italics in original).

There can be no doubt that Judge Duggan correctly attributed to the University Defendants the claim th there are "educational benefits tha flow from a raciall and ethnically diverse student body." What Judg Duggan missed, however, is that Gurin fails to shov anything of the sort.

Note that there is no assertion here that racial diversity is associated with positive educational outcomes (the claim on which Judge Duggan largely based his opinion). It turns out that what Gurin is claiming (and in fact claimed all along)–despite the clear, unambiguous, and highly misleading statement from the Expert Report that Duggan was no doubt echoing in his opinion–is that structural diversity is correlated with positive educational outcomes, but only when it is conjoined with other factors that may or may not be present on campus.[96]

The really crucial point, however, and the one that completely devastates the University's defense of its racial discrimination, is simply this: *Gurin doesn't demonstrate the latter, revised proposition either.* In fact, the CIRP database tells us that one must reject the claim that campus racial diversity is connected with the alleged educational benefits even when structural diversity is conjoined with Gurin's four "campus experience variables."

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[94] Ibid., p. 21.

[95] Gurin 1998: 3 (Summary and Conclusions).

[96] In our view, this means that Gurin's unqualified statement, which she no longer holds (if she ever did), should be struck from the court record.

If it were true, the claim that structural diversity produces educational benefits when conjoined with Gurin's four "campus experience variables" would actually be of some interest. For example, if the University could establish that racially diverse ethnic studies courses produce educational benefits and also that *only* racially diverse ethnic studies courses on racially diverse campuses do so, then the University would have established that campus racial diversity has an indirect positive effect on student outcomes, or to put this another way, that it has an effect, but only in the presence of one or more mediating variables. But the University cannot make this argument, because the four campus experience variables that Gurin considers (i.e., the things that Astin typically calls "diversity activities") are *controlled for in the ACE-HERI-CIRP regressions*, and because we know that after all these variables have been controlled for, the regressions fail to find either direct *or indirect* correlations between racial diversity and final student outcomes. This means that Gurin cannot argue that racial diversity produces educational benefits *even when it is conjoined with these other factors*.

If it were true, the claim that structural diversity produces educational benefits when conjoined with Gurin's four "campus experience variables" would actually be of some interest.

In Gurin's scheme, the focus is, from first to last, on her campus experience variables rather than on the racial diversity of the institution. Whatever merits this may have from the point of view of educational theory, it is nonsense to place the emphasis where she does when it is a matter of testing the hypothesis that *campus racial diversity* is connected with educational benefits, which is the only issue that is before the courts.

In Step 3 of her regressions, Gurin tests whether the four campus experience variables she considers continue to have statistically significant effects after controlling for structural diversity (i.e., she tests whether or not the campus experience variables have an impact on educational outcomes no matter what the racial diversity of the student body is). This, however, is a matter that is irrelevant to the constitutional question before the courts. On other hand, she *fails* to test whether the racial diversity of the student body is correlated with student outcomes, even though this test is *directly* on point for the legal issues. Furthermore, she fails to do this even though the CIRP database permits this crucial test, and despite the fact that Astin in his full-scale report of the CIRP database for the same 1985-89 longitudinal study ran this test and found that the database tells us to *reject* the very claim that the University is making in court! Finally, as Astin found, there are no direct *or* indirect correlations of any educational significance to be found between the racial diversity of the student body and student outcomes. Thus, the very database that Gurin uses tells us to reject the hypothesis that lies at the core of her analysis. And although she must have been aware of these findings, she does not even so much as mention them in her 160-page "Expert Witness Report"–the very document that comprises the heart and soul of the University of Michigan's claims about the educational benefits of campus racial diversity.

CONCLUSION

The University of Michigan is ideologically and institutionally committed to racial preferences in admissions. It is entitled to advance what it sees as moral and legal arguments that support its position. But there is no justification for a misleading statistical analysis. There is no justification for twisting data that refute claims about the educational value of diversity in order to make it appear that these data support such claims.

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PART V

PERSPECTIVES ON THE DATA

LEGAL DEFENDERS OF RACIAL PREFERENCES CONFRONT THE DATA

Most selective universities and the higher education establishment at One Dupont Circle continue to argue in and out of court that racial diversity is an essential component of quality education. A perusal of the literature reveals, however, that the legal defenders of such policies are well aware that they do not have the empirical evidence that will be required of them when the Powell rationale for racial preferences in university admissions comes under judicial review.

In this section, we discuss some examples.

A perusal of the literature shows that the legal defenders of preferential admissions policies are well aware that they do not have the empirical evidence that will be required of them when the Powell rationale comes under judicial review.

The Harvard Law Review (1996)

In 1996, the *Harvard Law Review* published "An Evidentiary Framework for Diversity as a Compelling Interest in Higher Education."[97] "Diversity in Higher Education" addressed an important question that Powell had failed to address in his own opinion, and indeed one that Powell seems not to have anticipated or contemplated at all, i.e., what kind of evidence should be required of universities that wish to grant preferential treatment on the basis of race in order to increase the diversity of their student bodies, and how strong should courts expect that evidence to be?

The *Harvard Law Review* article contends that courts should find the subjective testimony of educators sufficient for this purpose:

> Although the educational community has heralded diversity's benefits, current social science methods do not provide definitive measurements. Therefore, if courts did require universities to prove that diversity furthers learning, courts would be making a substantive choice that higher educational institutions cannot pursue diversity.
>
> Rather than preventing universities from seeking the educational benefits of diversity, courts should find the testimony of educators sufficient to establish these benefits. Educators have sufficient day-to-day interaction with the educational process to provide the careful examination that the Court seeks.[98]

There are at least three problems with the view that courts should find the testimony of "educators" sufficient to establish the alleged educational benefits of racial diversity.

There are at least three problems with this position.

First, as we have seen, the "educational community" does not speak with a single voice on this matter. University administrations and the higher education establishment at One Dupont Circle defend these policies vigorously, but state-of-the-art survey research has clearly demonstrated that students and the faculty who actually teach in the classrooms strongly oppose them. This makes it very hard to believe that students and faculty believe that racial diversity is necessary for quality education.

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[97] Henceforth referred to by the running head of the article as "Diversity in Higher Education."

[98] "Diversity in Higher Education," p. 1361.

Second, reliance on the testimony of educators (presumably university presidents, deans, administrators, and governing boards) ignores that fact that these educators are subject to all kinds of public and political pressures on this issue (including, in the case of public universities, considerable pressure from black and Hispanic state legislators). Consequently, courts cannot assume that university presidents and administrators ever give publicly the real reasons for their support of preferential admissions policies.

Finally, the assertion that "current social science methods do not provide definite measurements" is demonstrably untenable, since definite measurements on this very question are available from the CIRP database. Indeed, the author or authors of "Diversity in Higher Education" were aware of the CIRP database, since the article cites Astin 1993b: 431.[99] Quite unaccountably, however, the article fails to cite Astin's crucial finding from Astin's much more complete book-length report of his findings, *What Matters in College?* (Astin 1993c: 362). The article by Astin that "Diversity in Higher Education" cites discusses what Gurin has called "campus experience variables," but not the crucial variables, which is the racial composition of the peer group.

The claim made by the "Note" in the Harvard Law Review, that "current methods do not provide definite measurements," is quite untenable. On the contrary, current methods provide very good and definite measurements. It is just that these measurements tell us to reject *the hypothesis that educational outcomes are connected with the racial composition of the student body.*

As we have seen, the HERI findings about the absence of positive correlations between structural diversity and student outcomes come from state-of-the-art research that meets the norms for multivariate regression analysis. They are also based on an unusually large samples of both students and institutions. On the basis of this very solid research, Astin himself has had to acknowledge that there are no educationally significant correlations between beneficial student outcomes and structural diversity. Consequently, it is simply false that "current methods do not provide definite measurements." On the contrary, current methods provide very good and definite measurements. It is just that the methods tell us to *reject* the hypothesis that student outcomes are connected in any educationally significant way with the racial composition of the peer group.

Harvard University's Civil Rights Project Conference, Cambridge, Mass., May 1997

The May 1997 conference of Harvard University's Civil Rights Project provides one of the most striking examples of the incongruity between what the legal defenders of preferential admissions policies say publicly and what they say to each other and to educational researchers when they believe (in this case mistakenly) that they are out of earshot.

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[99] Ibid., p. 1373, fn. 118. This footnote also cites a survey (Budd 1990), which found that Alexander Astin was the most cited author in higher education literature.

"Participants at the day-long conference, sponsored by Harvard University's Civil Rights Project, assessed existing social-science research on the value of diversity – which they found wanting."

The Harvard Civil Rights Project conference was covered by Douglas Lederman of the *Chronicle of Higher Education*, higher education's leading professional journal. At the conference, more than 150 academics, lawyers, and civil rights advocates vetted arguments that some of the leading educational researchers in the field presented to them. Lederman reports that these academics, lawyers, and civil rights advocates agreed at the conference that the presented evidence fails meet the standards that courts will likely demand.

In his article, entitled "Backers of affirmative action seek research to bolster cause: At meeting at Harvard, sympathetic lawyers tell scholars that their work will not sway many judges," Lederman wrote:

> For two decades, colleges have taken for granted that it is not only legal, but just, to use affirmative action to diversify their student bodies and faculties. But ever since a federal appeals court shattered that assumption more than a year ago by barring a Texas law school from using race as a factor in admissions decisions, college officials have been forced to wrestle with the knotty task of persuading judges, politicians, and the public that diversity is an essential goal, and affirmative action a valid way of achieving it. A meeting of more than 150 academics, lawyers, and civil-rights advocates here this month showed just how tough a chore that may be, and how far academe is from accomplishing it. Participants at the day-long conference, sponsored by Harvard University's Civil Rights Project, *assessed existing social-science research on the value of diversity– which they found wanting* [emphasis ours]– and brainstormed about studies that might yet be done. They also exhorted each other to make the case for affirmative action in every possible setting. But as legal experts picked apart the academic studies offered in support of affirmative action, civil-rights advocates and professors bristled as they realized how little room recent court decisions have left for justifying the use of racial preferences, no matter how passionately proponents believe affirmative action to be morally right. ... For this month's conference, which was aimed at developing research on diversity for use in court cases, the Harvard sponsors asked several scholars to report on existing studies of how diversity helps students learn and teachers teach, and to glean similar evidence from data bases. Sylvia Hurtado, an assistant professor of education at the University of Michigan, unveiled a study showing that female and minority professors are more likely than white men to use cooperative learning and other techniques that, she

"[L]egal experts picked apart the academic studies offered in support of affirmative action ... [they] poked similar holes in other pieces of research, disheartening some of the academics in attendance, who were confronted with the need to justify a concept they believe in implicitly."

> said, help students learn. But John A. Payton, a Washington lawyer who has defended affirmative action in several major cases, said such a finding would probably not convince a judge of the merits of diversity. He suggested that a judge or opposing lawyer would challenge her argument by saying: If you believe that those techniques are beneficial, why not just require all professors to adopt them, rather than counting on only some minority professors to do so? Legal experts poked similar holes in other pieces of research, disheartening some of the academics in attendance, who were confronted with the need to justify a concept they believe in implicitly. ... The answers to tough questions, they agreed, will be hashed out in additional meetings planned by the Civil Rights Project at Harvard, and in many other gatherings of lawyers, university officials, and researchers in the months and years to come. What is not at all clear, they admit, is whether the answers will come fast enough to keep up with the stream of court challenges to affirmative action– and, when the answers come, whether they will satisfy skeptical judges and an uncertain public."[100]

The articles published since May 1997 have done nothing to change the situation described by the participants at the Harvard conference.

Lederman reports that Christopher Edley, one of the directors of the Harvard Civil Rights Project, was raising money to commission studies that the Project hoped would sway judges. And in fact, since May 1997 a relatively large number of articles and studies, including Patricia Y. Gurin's Expert Witness Report, have appeared in an attempt to buttress the universities' claims. But both singly and collectively, they have done nothing to change the outlook described by the participants at the Harvard conference.

It is not clear how serious a hearing the U.S. Supreme Court will give Justice Powell's diversity rationale when it revisits the legality of racial preferences in university admissions. If it does give the rationale a serious hearing, however, the Court will surely require universities to provide hard empirical evidence that, at a minimum, meets the standards set for social science and educational research generally. The HERI-ACE-CIRP database is the only one to date that is able to address the key question in a rigorous way. That database tells us to unequivocally reject the hypothesis that there is a correlation between educational excellence and the racial diversity of the student body. Consequently, it is not just that universities do not yet have the research findings they need to defend their policies in court. It is much worse for them: they have very good evidence on the question that actually *disconfirms* their claims.

It is not just that universities do not yet have the research findings they need to defend their policies in court. In fact, they have very good evidence on the question, which actually disconfirms *their claims.*

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[100] Lederman 1997. The full text of the article is provided in Appendix IX.

Goodwin Liu, Harvard Civil Rights-Civil Liberties Law Review, 1998

Goodwin Liu's *Harvard Civil Rights-Civil Liberties Law Review* article of 1998 is of great interest because of the attention it pays to the HERI-ACE-CIRP database.[101]

Liu rejects the view that Powell's diversity rationale for racial preferences in admissions can be based on nothing more than the subjective testimony of "educators"–a view which had been advocated in the 1996 *Harvard Law Review* article "Diversity in Higher Education." Liu believes (no doubt correctly) that courts will find this kind of evidence insufficient:

> [G]iven hints of judicial skepticism toward 'subjective evidence,' ... it is questionable whether testimony alone is sufficient to substantiate the diversity rationale.

On the other hand, Liu also believes that it is unreasonable to expect a university to produce hard empirical evidence that racial diversity has educational value:

> Must a university also produce empirical data showing that racial diversity has educational value? Of course, 'hard data' associating a racially diverse student body with positive educational outcomes would go far toward verifying that a university's stated interest in diversity is genuine. But it is not clear that this is what a 'strong basis in evidence' requires. This question implicates the capacity and limits of educational research, and we must look there to assess the practicality of such a requirement.[102]

It is true that the requirements of multivariate regression analysis place significant demands on a database. However, the demands are not inordinate. Furthermore, there is already a database that is more than adequate for the task– the ACE-HERI-CIRP database. The best proof that requiring a university to produce "hard data" on the question is not an unrealistic one is that there already *is* such a database.

The best proof that being able to produce empirical data is not an unrealistic requirement is that such data already exists. It is very odd that Liu asserts the contrary, since he is well aware of the existence of the CIRP database. Furthermore, the CIRP database was specifically designed to meet the very constraints on research that Liu believes it would be unreasonable for courts to expect universities to produce.

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[101] Liu refers to an unpublished paper by Mitchell J. Chang (Liu 1998: 435, fn. 250). Liu tells us that Chang's paper is based on "survey data from the Astin study." It is clear from Liu's footnote that this must be a reference to Astin 1993c. But Astin 1993c– which found no educationally significant correlation between campus racial diversity and positive educational outcomes– is not cited anywhere in Liu's paper. The only work by Astin that Liu does cite in this connection is Astin 1993b, which of course fails to cite the crucial finding that is reported in Astin 1993c: 362. Liu's paper is dedicated to Greg Ricks and Sandy [Alexander W.] Astin (ibid., fn. *).

[102] Liu 1998: 433.

It is very odd that Liu asserts the contrary, since he is well aware of the existence of the CIRP database. Furthermore, Liu must be aware that the CIRP database was specifically designed to meet the constraints on research that Liu believes it would be unreasonable for courts to expect universities to produce.

Liu suggests an additional constraint on the "hard data" that a court might require:

> To obtain valid measures of the educational impact of diversity, a university would have to measure educational outcomes longitudinally and then compare the outcomes with those at an institution comparable in all aspects of educational environment and student characteristics *except* the racial diversity of the student body. Such studies are not impossible, and they are, of course, highly probative. However, it would be misguided for a court to require such a "particularized" empirical showing in every affirmative action case.[103]

It is not clear what Liu means by a "'particularized' finding in every affirmative action case." It certainly would be unreasonable to expect each university department or individual program to demonstrate a correlation between racial diversity and *its* outcomes. But so far as we know, this has never been an issue in any litigation to date over racial preferences in university admissions. When a lawsuit is brought against a university's admissions policies, and the university elects to defend that policy by appealing to Justice Powell's diversity rationale in the *Bakke* opinion, courts will reasonably expect (assuming they are prepared to give the diversity rationale any hearing at all) that the university be able to produce– at a *minimum*– hard evidence that positive educational outcomes are *generally* correlated in higher education with the racial diversity of the student body. There is, as we have seen, very good research that addresses this question, but unfortunately for the defenders of racial preferences, the evidence cuts very much the other way. Furthermore, as Liu must surely have realized, the "Astin study" (i.e., Astin 1993c) has a large number of controls for holding all the relevant aspects of the educational environment and student characteristics equal *except* for the racial diversity of the student body. In fact, the ACE-HERI-CIRP database, as Astin himself points out, was set up to do precisely this![104]

The fact that there is high-quality research on this question is what makes the Powell rationale for racial preferences in university admissions very different from Wittmer v. Peters, a case that Liu cites.

The fact that there is high-quality, standards-meeting educational research on this very question is what makes the Powell rationale for racial preferences very different from what was at issue in Wittmer v.

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[103] Ibid., p. 436.
[104] Astin 1993c: 4.

Peters, a case that Liu cites.[105] At issue in Wittmer was a policy granting preferential treatment on the basis of race to a black lieutenant in a boot camp. The Wittmer court upheld the appointment of the lieutenant under the strict scrutiny standard, on the grounds that the type of evidence required under strict scrutiny should depend partly on the type of evidence that is available. Because the expert witnesses in the case had little experience with boot camps and because of the unavailability of social scientific literature focussing on such institutions, the court held that the defendants' testimonial evidence and the empirical data that was presented were sufficient to meet the strict scrutiny standard. Judge Posner, the Chief Judge in the case, wrote: "If academic research is required to validate any departure from strict racial scrutiny, social experimentation in the area of race will be impossible despite its urgency."[106] Liu cites the Wittmer decision and Judge Posner's decision in support of the proposition that "While the law should preclude a trier of fact from finding a 'compelling interest' without *some* evidence that racial diversity has educational value, that evidence need not amount to a statistically valid proof."[107]

Whatever merit this position may have had in the Wittmer case, it has none for the question of racial preferences in university admissions, since that question has been studied extensively, and there is state-of-the-art, fully adequate research evidence that bears on the question. Liu seems to be aware of the evidence, and even cites some of it (including the studies based on the CIRP database), but ignores the crucial finding that multivariate regression analysis on the CIRP database discloses no educationally significant correlations of the kind required. Instead of dealing with this crucial test, Liu chooses to discuss instead findings which are irrelevant. He refers instead to findings about what Gurin and others have called "campus experience variables," rather than the crucial test.[108]

Liu also appeals to the "in turn" hypothesis. Citing Chang, Liu says:

> Chang found that racial diversity has a direct positive impact on an individual student's likelihood of discussing racial or ethnic issues and socializing with someone of a different race. Discussing racial issues and socialization across racial lines, *in turn* [emphasis ours], have positive effects on retention, overall col-

Liu also appeals to the "in turn" hypothesis. But as we have shown, this hypothesis is a Potemkin village At best, the "in turn" hypothesis is a program for the future, since the present findings show no direct or indirect effects between final outcomes and educational diversity. Nor is there any reason to expect this to change in the future, since the correlations are weak and because there is strong evidence that the interaction effects among the variables are also weak.

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[105] Ibid., p. 437, citing Wittmer v. Peters, 87 F.3d 916, 920 (7th Cir. 1996).

[106] Wittmer v. Peters.

[107] Id. 438.

[108] Liu does not use the term "campus experience variables," but he clearly has in mind what Gurin has called "campus experience variables" in her Expert Report in the University of Michigan litigation (Gurin 1998).

> lege satisfaction, intellectual self-concept, and social self-concept.[109]

The "in turn" hypothesis is nothing but a Potemkin village.[110] At best, the "in turn" hypothesis is a program for the future, since the present findings show no direct *or* indirect effects between final outcomes and educational diversity. Nor is there any reason to expect this to change in the future, since the correlations are weak and because there is strong evidence that the interaction effects among the variables are also weak.

Having rejected the view that purely subjective testimony about the educational efficacy of campus racial diversity is sufficient *and* that hard evidence is required, Liu advocates as an alternative that courts should require of universities only that they prove to the courts' satisfaction that they do not have impermissible or unconstitutional *motives*. According to Liu, all the universities should be required to show is that they are motivated by the concern to maintain educational quality rather than to achieve racial balancing.

The view that the constitutional question is simply about possibly impermissible or unconstitutional motives, and that universities need only meet very relaxed and non-rigorous standards of evidence in support of racially preferential admissions policies, is surely untenable. The Constitution guarantees equal protection of the laws regardless of the race benefited or burdened. This means that individuals have a right under the Fourteenth Amendment to receive the same treatment that is given out to others, regardless of race. Any deviation from this command must meet the extraordinarily exacting standard of strict scrutiny.

If the burden of proof is on the universities that are employing such preferences (as it surely is), that burden can't be *less* than that required for educational or social science research generally. If anything, it should be higher– *much* higher. Indeed, it might well be argued that empirical research purporting to show a correlation between educational quality and racial diversity isn't even relevant, since in general the view that individual rights can be overriden by claims of general societal utility is precisely what the Constitution forbids.

The constitutional burden on universities can't be less than that required for educational or social science research generally. The burden is actually higher– **much** *higher. Indeed, it might well be argued that empirical research purporting to show a correlation between educational quality and racial diversity isn't even relevant, since in general the view that individual rights can be overriden by claims of general societal utility is precisely what the Constitution forbids.*

THE PROSPECTS FOR FUTURE RESEARCH

The picture presented by the present state of research is very clear. It tells us to reject the hypothesis that campus racial diversity is connected with positive educational outcomes. But what about the prospects for future research? What is the likelihood that future research will compel us to revise this picture?

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[109] Liu (1998: 435).

[110] Vide supra, p. 82.

Two possibilities need to be considered. One is the possibility of future research in interventions like ethnic studies courses and workshops. Another is the possibility of future research using databases comprehensive and robust enough to support rigorous cross-institutional comparisons through multivariate regression analysis.

There is no research indicating that race is a factor in the effectiveness of interventions like ethnic studies workshops.

Research on Interventions

Intervention research and evaluation would involve random assignment of students to workshops, courses, or other interactions or programs in such a way that the racial composition of the groups would vary. In an experimental situation, all the variables or parameters would be held constant except for the racial composition of the groups being studied. Standard statistical tests would then be employed to test whether the effectiveness of the interventions varied according to the racial composition or diversity of the groups.

"**Q:** *And for your studies–for your study, how did you go about measuring structural diversity?* **A:** *We have a measure of structural diversity only in the CIRP study." – Gurin Deposition*

Although there has been extensive research on interventions, none of this research to date, at least to our knowledge, has considered the racial composition of the group as a critical variable. As a result, the present research tells us nothing about the possible impact of race on these interventions.

Conclusions in this area will be difficult to draw in any case, because there is no necessary connection between the racial diversity of an institution and the percentage of students of different races and ethnicities that might enroll in such programs. This is not just an abstract consideration. Pascarella and others found, for example, that there were racial and ethnic differences in the rates at which first year students participated in a program sponsored by the national Study of Study Learning at the University of Illinois at Chicago.[111] This means that it will be difficult to draw any conclusions about the educational benefits of artificially increasing campus racial diversity through preferential admissions policies even if correlations could be established between the racial mix of interventions and final outcomes. In any case, as we've already pointed out, there is at present no research indicating that race is a factor in the effectiveness of interventions.[112]

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[111] Pascarella et al. 1996a: 192: "... white students are not only more likely to live on campus and attend a racial or cultural workshop than their nonwhite counterparts, they also to benefit more substantially from those experiences when they have them than do nonwhite students."

[112] Even so, this is better than the research picture for the hypothesis that campus racial diversity enhances educational outcomes, for evidence already exists on that point, and it *disconfirms* the diversity rationale.

Both of the foregoing points apply to the other two studies that are cited in Gurin 1998: the Michigan Student Survey and the IRCC program. As Gurin herself points out, neither program controls for "structural diversity," either with respect to the institution or the program:

(1) "An important question to examine first is whether structural diversity– the degree to which students of color are represented in the student body of a college– shapes classroom diversity and opportunities to interact with diverse peers. It is through these diversity experiences that growth and development occur among college students. To test this hypothesis, I use data from the national CIRP data base."[113]

(2) "**Q:** And for your studies–for your study, how did you go about measuring structural diversity? **A:** We have a measure of structural diversity only in the CIRP study. **Q:** And what is that measure? **A:** It's the percentage of students who are not white at each of the 184 institutions that are part of the CIRP study. **Q:** So it's a simple percentage of the student body. And how did you measure that variable in the other two studies, or did you not have - **A:** You can't measure structural diversity in the other two studies because it's a single institution which means nothing varies about it."[114]

"**Q:** *So it's a simple percentage of the student body. And how did you measure that variable in the other two studies, or did you not have -* **A:** *You can't measure structural diversity in the other two studies because it's a single institution which means nothing varies about it."*
–Gurin Deposition

(3) In her deposition, Gurin was questioned about the box that appears on p. 31 of her Expert Report, which says: "Structural diversity had significant positive effects on classroom diversity and interactional diversity among all students. Attending a diverse college also resulted in more diverse friends, neighbors, and work associates nine years after entry. This is strong evidence that structural diversity creates conditions that lead students to experience diversity in ways that would not occur in a more homogenous student body."

In this context the following exchange occurs: "**Q:** Can you tell me with specific reference to this conclusion what data you looked at and how you processed those data? **A:** We used the CIRP data since the CIRP study is the only one that has structural diversity in it. The first conclusion in the box which has to do with more classroom diversity and informal interactional diversity in the more structurally diverse schools was done by running a multiple regression and using as our outcomes classroom–how much classroom diversity and how much structural diversity students had. **A:** And this was

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[113] Gurin 1998: 30.

[114] Gurin Deposition 21.

> based solely on the CIRP data? **A:** That's right. That's the only place we have structural diversity."[115]

The Prospects for New Multivariate Analysis

To date, the only database that is equipped to answer the research question posed for the courts by Justice Powell's diversity rationale is the ACE-HERI-CIRP database. It is possible, however, that other databases meeting the demands of multivariate regression analysis will be developed in the future.

The National Study of Student Learning (NSSL) at the University of Illinois at Chicago is an example of a database that could be expanded to answer the same kinds of questions that the CIRP database is equipped to answer now.[116] Unfortunately, the NSSL database reported in Pascarella et al. 1996a appears to have been a one-time, four-year longitudinal study, rather than an on-going research program, as is the case with the ACE-HERI-CIRP database. But it is worth considering the NSSL database here, since it is one that could be continued and expanded to provide additional data on the question.

Pascarella et al. 1996a is a report on the first year of the project. The NSSL data was collected in the fall of 1992; the follow-up testing took place in the spring of 1993. The study involved 18 institutions, 2,290 students, and 19 student input variables. It also included (to use the terminology of the CIRP studies) 11 environmental "bridge" variables, 69 student involvements, and eight democracy outcomes.[117]

We know that the NSSL study includes data on the racial diversity of the student body at the 18 institutions involved in the study, because we are told that "Institutions were selected from the National Center on Education Statistics IPED database to represent differences in colleges and universities on a variety of characteristics, including ...the ethnic distribution of the undergraduate student body." Nevertheless, it appears that Pascarella and his colleagues did not use racial distribution as a control variable. This is perhaps to be expected, since it would be preferable to have more than 18 institutions to run a control. At any rate, no finding about correlations between the racial distribution of the student body and the eight final outcome variables is reported.

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[115] Gurin Deposition 37.

[116] See Pascarella et al. 1996a.

[117] We have used Astin's classifications for the variables in the NSSL study. However, Pascarella does not himself use these terms. We should mention, perhaps, that Pascarella and his colleague Terenzini regard Astin's theory of "intermediate outcomes" or of "involvement" as an "interesting concept," but one whose value has yet to be established as a theory (Pascarella and Terenzini 1991: 50-51).

Two pretests and three post-tests were used. The post-tests included C. R. Pace's College Student Experiences Questionnaire (CSEQ)[118] and a specially designed survey form that was designed to supplement the CSEQ.

The eight democracy outcomes of the NSSL study consist of student responses to the following survey items:

> I enjoy having discussions with people whose ideas and values are different from my own.
>
> The real value of a college education lies in being introduced to different values.
>
> I enjoy talking with other people who have values different from mine because it helps me understand myself and my values better.
>
> Learning about people from different cultures is a very important part of my college education.
>
> I enjoy taking courses that challenge my beliefs and values.
>
> The courses I enjoy the most are those that make me think about things from a different perspective.
>
> Contact with individuals whose background (e.g., race, national origin, sexual orientation) is different from my own is an essential part of my college education.
>
> I enjoy courses that are intellectually challenging.

The NSSL database is of interest, at least in part, because it shows that any new or expanded databases in the future will likely be very similar to the CIRP database, and that if such databases do emerge, they will likely corroborate the present research evidence rather than modify it or challenge it.

We have described the NSSL study in some detail partly in order to show its similarities with the ACE-HERI-CIRP database. The similarities are predictable, because there is now a well-settled methodology for such research. One would therefore expect the research designs to be similar. It is also of interest that the instruments used by NSSL and CIRP are similar (though not identical).

In the face of disconfirming evidence for their favored hypothesis, Liu and others in the academic and legal community have asked for a reprieve from court rulings striking down preferential admissions policies, in order to permit more research to be conducted. Such appeals typically fail to provide any reason for thinking that the present research is inadequate, nor any reason why courts should give the benefit of the doubt to programs that on their face violate the meaning of the federal constitution's guarantee of equal protection under the law. It is insufficient to simply appeal to, and hope for, additional future evidence. Defenders of preferential policies must give reasons for thinking that the present research is inadequate, and to specify research designs and research instruments that can reasonably be expected to remedy the alleged deficiencies. So far, legal defenders of racially preferential admissions policies have done neither.

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[118] The Fourth (1998) edition of the CSEQ is available online as an Adobe Acrobat PDF file at http://www.indiana.edu/~cseq/

In our view, the NSSL database is principally of interest because it shows that any future databases will likely be very similar to the CIRP database, and because it provides indirect evidence that if new databases do emerge, they will likely corroborate the present research findings.

For the most part, the black and Latino students who attend Harvard and other elite institutions come from the same middle to upper middle class background as do the white students. Furthermore, campuses themselves are less isolated from the larger society now than they ever were.

WHY FURTHER RESEARCH IS NOT LIKELY TO CHANGE THE PICTURE

There are, in addition, some a priori reasons for thinking that future research will not change the present picture.

Race, the Larger Society, and Stereotyping

According to Justice Powell, taking race into account is like taking regional or geographic factors into account in university admissions. In fact, Harvard had been considering the geographical origin of its applicants in admissions decisions long before it started considering race as a factor. In both cases, however, it may be doubted how accurately Justice Powell described the underlying motivation behind these policies. According to him, they were adopted with a view to offering students a better education. That is, he thought that the policies were motivated by the belief that students would get a better education at Harvard if they were part of a racially and geographically diverse student body. We suspect, however, that in both cases the predominant consideration was rather more self-regarding. Instead of being interested in having a genuinely diverse student body, Harvard may actually have simply wanted to have graduates very much like the ones it had always been graduating, but distributed more widely geographically (and later racially).

At the time Harvard adopted the Harvard Plan, regional differences in the U.S. were diminishing rapidly under the impact of mass electronic communications (radio and TV), the federal interstate highway system, increasingly unified financial, agricultural, commercial, industrial and media markets, and other factors. As the nation became more integrated and homogeneous, and regional and geographic differences waned, it was very much in Harvard's interest as one of the nation's leading institutions of higher education to have a student body with a broad and diverse national distribution, since this would lead to a national distribution of its (hopefully) well-placed and successful alumni. Significantly, the same rationale figures prominently in current defenses of racial preferences by Harvard and other elite institutions.[119] Such self-regarding institutional motivations, however, have no place in Powell's own constitutional reasoning. There, the emphasis is instead on the alleged educational benefits to *students* of racially diverse student bodies.

By the time Justice Powell wrote his opinion in the Bakke case in 1978, the process of national integration and homogenization had proceeded so far that it might very well be questioned whether the students who enrolled in Harvard in the late 1970s from all the states of the Union weren't more like each other than the great majority of the students from their own home towns with whom they had gone through high school. The same point can be made about racial diversity. For the most part, the black and Latino students who attend Harvard and other elite institutions come from the same middle to upper middle class background as the white students.

The legal defenders of racial preferences have never been able to reconcile the view that racial diversity is essentia to viewpoint diversity with the view of the Adarand Court, which held that racial classifications are facially invalid at least in part because they foster stereotypical thinking about the races.

Furthermore, campuses themselves are far less isolated from the larger society now than they ever were. In the nineteenth century and in the early decades of the twentieth, campuses were to a large extent cloistered worlds unto themselves. Because they are not so any more, one might reasonably expect the impact of a large number of aspects of the on-campus college experience to have diminished over the years. Through the Internet, radio, and TV as well as the curriculum, the concerns and issues of American society, including race, and the issues and concerns of America's racial and ethnic groups, will saturate the typical American campus, regardless of the racial composition of the student body. As a result, in longitudinal studies of student change like the ACE-HERI-CIRP studies, it will be difficult to disentangle the impact of racial diversity (or any other college measure) from factors influencing the university from the outside. Even an all-black or all-white institution would not be able to escape these wider social and cultural influences, given that it wanted to. All these factors greatly diminish the impact that racial diversity will have on the intellectual, cultural, and social diversity of the student body.

It is not at all clear how the postmodernist view that racial diversity matters enormously can be made to fit into the traditional, classical, humanist view of higher education.

The same historical and social forces have also made it much more difficult (even if it were constitutionally permissible) for universities to engage in racial stereotyping. This is, in fact, an area where the thinking behind racially preferential programs is particularly convoluted and confused.

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[119] Vide supra, fn. 11, p. 17

What Powell seems to have had in mind in his Bakke opinion was using racial (and other) classifications to ensure a diversity of different views on campus. Presumably, Powell believed that racial diversity could serve to some extent as a proxy for viewpoint diversity. But it can do so only to the extent that different races have stereotypically different viewpoints, and this is a view which the Adarand Court warned against when it held that all government programs, including federal ones, must meet the most exacting standard of judicial scrutiny.

It is not always clear whether proponents of racial preferences in admissions believe that racial diversity is a good thing because it produces a corresponding diversity of viewpoints, or whether they believe that racial diversity on campus is important in order to educate students against stereotypical thinking and to make them aware of the wide variation on social and public policy positions within all racial and ethnic groups. As a matter of simple logic, it is hard to see how proponents of racial preferences can have it both ways. The first view undoubtedly fits more comfortably into Powell's "diversity" paradigm, because the most natural way of interpreting the view that racial diversity is important to education is to suppose that blacks, whites, Latinos and the other races and ethnicities are socially, culturally, and ideologically quite different, and that individuals from different racial and ethnic groups can therefore understand each other only if they have the opportunity to interact with one another in and out of the classroom on campus. What the legal defenders of preferences have never fully resolved is how to reconcile this view with the view of the Adarand Court, according to which racial classifications are presumptively invalid at least in part because they foster stereotypical thinking about the races.

It is not obvious how the traditional university can accommodate itself to the new, postmodernist paradigm without changing its nature completely. As James Q. Wilson has put it: "The United Nations is governed according to such principles. Institutions of higher education canno be."

Racial Representation and the Classical Liberal Conception of Higher Education

Even the most ardent proponents of racial diversity would have to concede that there are large sectors of campus life for which racial diversity can have little or no conceivable relevance. This is certainly true for cognitive outcomes in the sciences, engineering, medicine, and mathematics. While race is undoubtedly an important subject matter for a number of other disciplines (particularly literature and the social sciences), race figures as only one relatively small part of the curriculum and subject matter even in these fields. Defenders of preferential admissions policies have attempted to blunt the force of this objection by emphasizing the importance of interactions outside the classroom even for students majoring in scientific and engineering fields. As we have pointed out, however, as we have pointed out the effects of racial diversity on student outcomes via these "campus experience variables" are either weak or non-existent.

More generally, it is not at all clear how the postmodernist view that racial diversity matters enormously can be made to fit into the traditional, classical, humanist view of higher education. On the earlier, classical view, the truth or validity of an opinion or viewpoint has nothing to do with the race, ethnicity, sex, or class of the person holding that opinion. On this view, the notion that only black people can speak for blacks or know what it means to be black, for example, is a quite alien notion. This is not to say, of course, that the pre-postmodernist, classical view of education holds that one has an innate, intuitive knowledge about the cultural, social, or political views of individuals belonging to different races, ethnicities, or nationalities. It does hold, however, that the views and experiences of individuals with very different experiences and backgrounds can be understood by others, and that it is possible to escape from the particularities of race, nation, class, etc. through the process of critical thinking and the process of obtaining a liberal education. Today, there is a faction in the academy that asserts that this view of education and of human nature is naïve, and that the view that one can free oneself from the particularities of one's race, sex, and ethnicity is an invention by white males to oppress women and minorities. On this view, the proportional representation of different groups on campus is vitally important for educational reasons. But the principle of proportional representation is quite antithetical to the traditional notion of the university, and it is not obvious how the traditional university can accommodate itself to it. As James Q. Wilson has put it: "The United Nations is governed according to such principles; institutions of higher education cannot be."[120]

The impact of racial diversity on student outcomes will be greatly by at least three factors: the underlying demographics, which constrain racial diversity on campus for the foreseeable future; the slope of regression lines for interracial interaction; and the fact that the interaction effects among structural diversity, interracial interactions, and outcome variables are either non-existent or are likely quite weak.

It is likely that stereotypical thinking about race, and the postmodernist view that we are all captives of our own race, sex, and ethnicity, have led to an overestimation of the impact of racial diversity on campus life, and to a corresponding underestimation of the impact that *studying* race and ethnicity can have, quite independently of the racial distribution of a course or an entire campus. It is very hard to explain otherwise why proponents of race-based admissions policies believe that it is relevant, without saying more, to point out that ethnic studies courses or cultural awareness workshops have been found to be correlated with some positive educational outcomes. The finding that studying or discussing race or ethnicity is correlated with some positive educational outcomes justifies programs that artificially increase racial diversity only if the success of those programs is contingent on the racial distribution of the classes or workshops. In the postmodernist view, no doubt, the assumption that the effectiveness of such courses *must* depend on racial diversity is a natural–even inevitable–one, but it is a quite alien notion to the traditional, classical, humanist view of education. This does not mean, of course, that racial diversity isn't desirable on the traditional or humanist view. But it does mean that on the traditional view it is desirable for reasons other than educational ones.

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[120] Wilson 1992.

So far as we know, there has been no research to date on racial and cultural workshops that attempts to control for racial distribution as a control or input variable. It is possible–though in our opinion unlikely–that educationally significant correlations will eventually be found by longitudinal studies if and when such research is carried out. In any case, until such research findings are available, claims about the educational importance of racial diversity that are based on findings about the educational value of workshops and ethnic studies classes are worthless, because it is not possible to distinguish on the basis of the present studies between the effects of *studying* race and the impact of racial diversity on interventions that involve the study or discussion of race.

Factors Limiting the Impact of Interracial Interraction on Campuses

Even if future research were to demonstrate that race and ethnicity has an impact on student outcomes, that impact will be limited by purely demographic factors.

Chang (1996) has argued that the impact of interracial contacts in and out of the classroom would show up most clearly on campuses where all racial groups would have an equal chance of interracial interaction. This condition would be satisfied if blacks, Latinos, Asian-Americans, and whites were equally represented on campuses. As Chang's analysis of the CIRP data shows, American colleges and universities are a long way from this racial distribution. American campuses are still overwhelmingly white, and furthermore, they are likely to remain overwhelmingly white for a long time to come.

If one makes an exception for Asian-Americans, who are actually "overrepresented" on many campuses, this will be true for some time to come even in states like California, where demographic changes have been the most pronounced. There, the racial mix is likely to be dominated by whites and Asian-Americans for some time to come, at least at the more selective institutions. Forecasts of a large influx of Hispanic students into California universities typically overlooks the fact that the category "Hispanic" is an ethnic term, not a racial one. Second and third generation Hispanics are rapidly being assimilated into American culture and society, and their rates of intermarriage are very high. Since more than half of Hispanics nationwide identify themselves as "white," rather than as "black" or "Latino,"[121] the influx of large numbers of Hispanics into California's universities in the future will have a far smaller impact on the *racial* diversity of California's campuses than would a similar number of black or Asian-American students.

The view that race matters enormously to higher education is so strongly held in certain quarters that it seems to be largely immune to both logic and evidence.

These demographic factors will operate to limit the impact of cross-racial interactions on campuses even if racial diversity were correlated with beneficial student outcomes. William Bowen and Derek Bok calculate that if black enrollment in the schools in their College & Beyond database dropped from 8 percent to 4 percent, the drop would likely reduce the percentage of white matriculants who knew well two or more black students only from 61 percent to 53 percent.[122] Because racial distributions on campuses are very skewed, increases (or decreases) in racial diversity do not lead proportionately to changes in the rates at which different races on campus interact.

The impact of racial diversity on student outcomes is therefore likely to be greatly limited by at least three factors: the underlying demographics, which constrain racial diversity on campus for the foreseeable future; the slope of the regression lines for interracial interaction; and the fact that the interaction effects among structural diversity, interracial interactions and outcome variables are in all likelihood quite weak.

COMPARING THE FINDINGS ABOUT SOCIOECONOMIC STATUS AND GENDER WITH THE FINDINGS ABOUT RACE AND ETHNICITY IN THE CIRP 1985-89 LONGITUDINAL UNDERGRADUATE STUDY

We have mentioned a number of reasons, some a priori and some empirical, for rejecting the Powell diversity rationale for racial preferences in university admissions. We do not assume, however, that the defenders of these policies will be convinced by this evidence and our arguments, or in fact by any amount of evidence or argument. The view that race matters enormously to higher education is so strongly held in certain quarters that it seems to be largely immune to both logic and evidence.

In the face of contrary findings in the CIRP database, for example, defenders of racial preferences are likely to conclude that there *must* be some defect in the database. (In effect, this is what the *Harvard Law Review* article "An Evidentiary Framework" and Goodwin Liu have already concluded.) But simply denying the validity of the findings won't do; critics will have to give a reasoned basis for not accepting the findings as definitive and compelling. But they also have to explain, among other things, why the same database finds, as one would expect, a large number of educationally significant correlations between final outcomes and *other* input variables.

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[121] See Table 3.3, DeSipio 1996: 65.

[122] Bowen, W. G., & Bok, D. 1998: 234-238, esp. Fig. 8.4. "Factors Influencing the Extent of Interaction." Fig. 8.4, which shows the slope of the regression line, is particularly revealing.

The CIRP database is perfectly adequate to its task. (If anything, the sample sizes are so large that the database is capable of registering even tiny effects that are of no real educational significance.) The database does find a relatively large number of input variables that have an impact on final student outcomes. It is just that the racial composition of the student body is not one of them.

It is not feasible to catalogue here all the educationally significant correlations between the 82 final outcomes, 131 student input variables, and 135 environmental variables that Astin reports in his book of 482 pages. But perhaps that isn't necessary. Let us lower our sights a bit and just consider two of the variables Astin considers: gender and socioeconomic status (SES). The defenders of racial preferences have to explain why, if racial diversity matters so much, no educationally significant correlations are found in the CIRP database between this input variable and final outcomes, when the very same database finds a relatively large number of educationally significant correlations between final outcomes and SES and gender, two variables with which discussions of campus racial diversity are often linked.

The defenders o racial preferences must explain why no educationally significant correlations are found in the CIRP database between final outcomes and racial diversity, when the very same database does find a relatively large number of correlations between final outcomes and SES and gender (two variables with which discussions of campus racial diversity are often linked).

The following passages are excerpted from Astin's book on the 1985-89 longitudinal undergraduate study, *What Matters in College?*:

Findings about Gender: Predominantly Men's Colleges

> Attending a predominantly men's college has positive effects on the student's satisfaction with Facilities, Individual Support Services, faculty, general education requirements, overall quality of instruction, and overall college experience. Predominantly men's colleges also have positive effects on two perceptual outcomes– Trust in the Administration, and Social Change orientation– and a negative effect on the perception of Resources and Reputation Emphasis.
>
> In the behavioral realm, predominantly men's colleges have positive effects on voting in the 1988 election, getting married, and tutoring other students, and negative effects on being elected to a student office and jointing a social fraternity or sorority. ...
>
> Attending a predominantly men's college has negative effects on choosing careers in science or engineering. The finding

could well be an artifact caused by the inclusion of the service academies in this category.[123, 124]

Findings about Gender: Colleges for Women

Attending a college for women is positively associated with baccalaureate completion and with a number of satisfaction outcomes: faculty, overall quality of instruction, general education requirements, Facilities, Individual Support Services, and overall satisfaction. But the strongest effects are on several perceptual outcomes: Diversity Orientation (Beta = .22), Student-Oriented Faculty (Beta = .16), Social Change Orientation (Beta = .14), and Trust in the Administration. Attending a women's college also has positive effects on practically all "leadership" outcomes: the Leadership personality measure, self-reported growth in leadership abilities and public speaking skills, and being elected to a student office. Women's colleges also have positive effects on self-reported growth in Overall Academic Development, Cultural Awareness, writing skills, analytical and problem-solving skills, critical thinking ability, and foreign-language skills. Still other positive effects including participating in protests, and commitment to promoting racial understanding. ... It is important to point out that most of the findings reported here are *directly* attributable to attending a women's college; that is, they cannot be entirely explained or accounted for on the basis of other characteristics, such as small size, residential emphasis, and private control.[125]

"[T]he findings reported here are directly attributable to attending a women's college; that is, they cannot be entirely explained or accounted for on the basis of other characteristics, such as small size, residential emphasis, and private control." – Astin 1993c

Findings about Socioeconomic Status

Peer group SES produced twenty-one significant direct effects on student outcomes, more than any other peer group or faculty measure. Apparently, the individual student is substantially affected by the overall level of affluence and education of his or her fellow students' families. The types of outcomes affected by Peer SES are wide-ranging and include both cognitive and affective and behavioral and psychological measures. Peer SES has positive direct effects on virtually every aspect of student satisfaction: quality of instruction, general education require-

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[123] Astin 1993c: 325-326.

[124] "Because of the dearth of men's colleges in our sample and in the population at large, we decided instead to include an institutional measure indicating whether the student body comprised at least 80 percent men. In addition to one or two colleges that are still exclusively for men, such a category would include colleges with highly technical curricula (technological universities, services academies, and so on)." [Astin 1993c: 325]

[125] Astin 1993c: 324-325.

> ments, opportunities to take interdisciplinary courses, student life, and faculty. ... In addition, Peer SES also has significant indirect effects on satisfaction with the overall college experience and on willingness to re-enroll in the same college. In short, Peer SES has significant effects (mostly direct) on every area of student satisfaction except Individual Support Services.
>
> Peer SES also has significant direct effects on perceptions of a Student-Oriented Faculty, Social Change Orientation, Trust in the Administration, and Resources and Reputation Emphasis, and a significant indirect effect on the perception of Diversity Orientation.
>
> In the cognitive realm, Peer SES has a number of direct positive effects: GRE Verbal, MCAT, and LSAT, and self-reported growth in Overall Academic Development, general knowledge, analytical and problem-solving skills, listening ability, critical thinking skills, foreign-language skills, and preparation for graduate and professional school. ... In the psychological-affective realm, Peer SES has direct positive effects on Social Activism, Hedonism, and commitment to promoting racial understanding, and a direct negative effect on the view that racial discrimination in the United States in no longer a problem.[126, 127]

It is instructive to compare these findings with Astin 1993c: 362, where he reports the negative findings for the variable "racial composition of the peer group." Here there are two possibilities. Either the racial composition of the peer group has an educationally significant impact on at least some final student outcome variables, and the CIRP database and research methodology has simply failed to detect them, or

"Peer group SES produced twenty one significant direct effects on student outcomes, more than any other peer group or faculty measure. Apparently, the individual student is substantially affected by the overall level of affluence and education of his or her fellow students' families. The types of outcomes affected by Peer SES are wide-ranging and include both cognitive and affective and behavioral and psychological measures."
– Astin 1993c

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[126] Astin 1993c: 352-354.

[127] The fact that most of these correlations are direct as well as significant is of some importance. Directness is a significant measure of the strength of a variable. Astin 1993c: 313: "[Direct effects] are unique to the environment in question and cannot be attributed to other environmental variables. ... A variable can be considered as having a direct effect when it enters the regression equation and maintains a significant Beta coefficient even after all other variables have entered the equation. ... When this happens, the environmental variable is continuing to make a *unique* contribution to the outcome that cannot be accounted for or explained entirely by the effects of other environmental variables. An indirect effect is said to occur when (1) an environmental variable has a significant Beta coefficient after inputs have been controlled, but (2) the coefficient shrinks to nonsignificance when other environmental variables are added to the equation. In other words, when the effect of a particular environmental variable can be completely explained in terms of other 'mediating' variables, then its effect on the outcome is said to be entirely indirect."

the CIRP database has failed to detect such effects because there are none to be found. Those who favor the first hypothesis have never explained why the database has failed to detect these effects, assuming that they do exist, nor have they ever been able to explain why the same database has detected a relatively large number of educationally significant correlations between final outcomes and *other* input variables, including SES and gender–two variables with which the discussion of campus racial diversity are often linked.

Bakke was a ruling without an opinion, for V-C of the opinion fails to articulate a coherent rationale for racial preferences in higher education (though to be sure it does assert that there must be some such rationale).

DOES RACE MATTER?

The part of Powell's opinion that articulated the diversity rationale for racial preferences in university admissions has had a great impact on on higher education, constitutional law, and American life generally. From a purely legal point of view, this is hard to explain, as this part of Powell's opinion represents only one Justice's opinion. Yet very quickly, Powell's diversity rationale came to be regarded as representing the Court's opinion in the case. This is usually justified on the grounds that four other Justices did join in Part V-C of Powell's opinion.

On examination, however, that justification is untenable, because V-C does not mention the diversity rationale at all, and because the other four Justices rather pointedly declined to concur in those parts of Powell's opinion that do invoke the diversity rationale. As a result, Bakke was, for all practical purposes, a ruling without a decision, since V-C fails to articulate any coherent rationale for racial preferences in higher education (though to be sure it does assert that there must be some such rationale). It is, therefore, a mistake to ask, as many have, whether the Supreme Court will uphold or reverse Bakke in the future. Since the Court failed in Bakke to articulate a coherent constitutional principle that could inform and ground racially preferential admissions policies, the question whether the Court will uphold Bakke or reverse it simply does not arise. The only way, in fact, that the Court could "reverse" on Bakke would be to uphold a quota program like U.C. Davis', and that the Court is not going to do.

Defenders of racial preferences often characterize the Fifth Circuit as having held in Hopwood that "Bakke is no longer good law." This is mistaken. What the Hopwood court held (correctly) is that Powell's lone opinion in Bakke was ***never*** *the law.*

Universities who were bound and determined to continue artificially increasing the numbers of blacks and Latinos on their campuses through racial preferences proceeded to ignore the clear evidence of the court record, and plunged ahead. Despite the fact that Powell's lone opinion failed to win the concurrence– at least so far as the crucial details were concerned– of any other justice, universities started relying on Powell's diversity rationale as their constitutional basis for policies that presumptively violate the Fourteenth Amendment. Even when the Court ruled in Croson and Adarand that strict scrutiny applies to racial classifications regardless of the race that is burdened or benefited, universities acted as if nothing had changed.

The emperor was finally shown to have had no clothes all along in the Hopwood decision (1996) of the Fifth U.S. Circuit Court of Appeals. Defenders of racial preferences often characterize the Fifth Circuit as having held in Hopwood that "Bakke is no longer good law." This is incorrect. What the Hopwood court held (correctly) is that Powell's lone opinion in Bakke was *never* the law.

What was new–indeed revolutionary–in Powell's opinion was the notion that racial identity is crucial to higher education, and, as a result that the racial distribution of a student body is important as well.

It could have been predicted that universities would bet the constitutional future of their admissions policies on Powell's lone rationale rather than the more sweeping remedial rationale articulated by the Brennan Four. Powell's opinion granted universities a special dispensation from the command of the Fourteenth Amendment; the rationale articulated by the Brennan Four did not. In retrospect, universities were also wise to place their constitutional bets on Powell's lone opinion, because the remedial justifications for racial preferences favored by the Brennan Four were swept away by later Court decisions (including, most notably, Croson and Adarand), whereas the Court has never had an occasion to reject the Powell rationale in the same way. On the other hand, of course, the Court has never *endorsed* Powell's diversity rationale in Bakke, so universities don't have a precedent they can cite either. What they actually have is a proposition that has never been explicitly rejected nor explicitly endorsed by a majority of Supreme Court Justices. If a majority of the Court endorses the Powell diversity rationale in the future, it will be creating new law.

It was never part of the ideology of the original civil rights movement that race was essential to one's identity, either as a biological matter or otherwise. On what might be called the traditional, classical view of civil rights (which is ours), the other view represents the real threat to the dream of an inclusive and diverse America.

Although Powell's diversity rationale for racial preferences in university admissions clearly has no standing as a legal precedent, the widespread treatment of Powell's lone opinion as the virtual, if not the actual, holding of the Court in Bakke has done much to promote the notion that race matters in higher education. Indeed, the higher education establishment's adoption of Justice Powell's diversity rationale has advanced the notion that race plays a role in education in a way that was not, apparently, shared by any other Justice, including the Brennan Four.

According to the Brennan Four's remedial view, race matters in higher education, but only as an matter of fairness and justice. On their view, preferential forms of affirmative action were needed to redress past societal discrimination against certain racial minorities, particularly blacks. On this view, race matters only with respect to numbers. There is nothing in Bakke to suggest that the Brennan Four thought that race matters in higher education in any other way.

What was new– indeed revolutionary–in Powell's opinion was the notion that racial *identity*was crucial to higher education, and, as a result, that the racial distribution of a student body was important as well. With Powell, the rationale for racial preferences began to shift from race as an issue of justice and fairness–and accordingly as a public policy matter–to race as an educational matter. As time has shown, this notion fit quite naturally with many versions of multiculturalism and postmodernism on campus, according to which campus life must be built around racial and other group identities.

Powell's diversity rationale is connected now with very broad and highly charged social, cultural, and political issues. As a result, research findings that clearly show that race does not matter in higher education in the way that the Powell diversity rationale supposes have implications beyond the confines of the purely legal and constitutional questions. For those within the academy who believe that race is an important factor in the educational process, the findings do much more than simply threaten the legal basis of preferential admissions policies. They also challenge, in a very real sense, an entire worldview. There is no doubt that it is now a deeply held worldview, and that those who hold it will react to the findings with incredulity, and perhaps even more significantly, as a threat to the effort to make America a more inclusive and racially diverse society. For them, in order for America to be a truly diverse and inclusive society, it must first take race into account–and in a much different way than even Justice Blackmun seems to have ever contemplated.

With Powell, the rationale for racial preferences shifted from race as an issue of justice and fairness to race as an educational matter. As time has shown, this latter notion fit quite naturally with many versions of multiculturalism and postmodernism on campus, which openly advocate a campus culture and climate built on racial and other group identities.

Those who reject Powell's diversity rationale fall into two camps. There are those who believe, as Blackmun did, that racial preferences, despite the "tension" with the Fourteenth Amendment that they obviously entail, are justified by public policy considerations and above all by a concern for justice and fairness. Others believe that principles of justice and fairness condemn such policies, even when they are intended to promote an admittedly laudable goal. Powell, on the other hand, attempted to finesse the whole debate over fairness and justice and to devise a third alternative. In so doing he took the national debate over racial preferences, at least in higher education, in an unexpected direction. Under the Powell diversity rationale, race matters in a way that it does not on the view of those who treat racial preferences as a purely constitutional or public policy question involving issues of justice or fairness.

The issue is a defining one for the civil rights movement. For those who believe that race matters in a deep and essential (even if not a biological) way, the negative research findings cannot be taken at face value. For them, the students on whose responses the CIRP research findings are based cannot be answering honestly, or weren't asked the right questions, or must have been victims of a kind of "false consciousness," in which case their responses mean that they must be educated about why race *does* matter. But why should we assume that this is so? It was never part of the ideology of the original civil rights movement that race was essential to one's identity, either as a biological matter or otherwise. In fact, on the traditional civil rights view, one wouldn't *expect* race to have the same salience that one might expect gender and class to have, for example. On what might be called the traditional, classical view of civil rights (which is ours), any other view represents the real threat to the dream of an inclusive and diverse America.

We are pleased by the research findings we have reported here. We are happy to report them because they thoroughly undermine the central claim that underlies the current legal arguments for racial preferences in university admissions, to which we are opposed. But that is only part of the reason. More broadly, the research findings show that race does not matter in the way that the researchers and radical multiculturalists themselves clearly expected. This, surely, is very good news for America.

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APPENDIX I:

Links and materials on accreditation relevant to affirmative action and diversity

LINKS AND MATERIALS ON ACCREDITATION RELEVANT TO AFFIRMATIVE ACTION AND DIVERSITY

LINKS TO THE OFFICE OF POST-SECONDARY EDUCATION, WASHINGTON D.C. AND THE COUNCIL FOR HIGHER EDUCATION ACCREDITATION

Post-secondary accrediting agencies Office of Post-Secondary Education, Wash DC
http://www.ed.gov/offices/OPE/Students/Accred.html
http://www.ed.gov/offices/OPE/Students/file4a.html

Council for Higher Education Accreditation
Directories of accrediting agencies, higher education
http://www.chea.org/directories/regional.htm

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LINKS TO THE REGIONAL HIGHER EDUCATION ACCREDITING ASSOCIATIONS AND THE AMERICAN ACADEMY FOR LIBERAL EDUCATION

MIDDLE STATES ASSOCIATION OF COLLEGES AND SCHOOLS / COMMISSION ON HIGHER EDUCATION
http://www.msache.org/
http://www.middlestates.org/

NEW ENGLAND ASSOCIATION OF SCHOOLS AND COLLEGES / COMMISSION ON INSTITUTIONS OF HIGHER EDUCATION
http://www.neasc.org/cihe/cihe.htm
http://www.neasc.org/cihe/cihe.htmc
http://www.neasc.org/

NORTH CENTRAL ASSOCIATION OF COLLEGES AND SCHOOLS / COMMISSION ON INSTITUTIONS OF HIGHER EDUCATION
http://www.nca.asu.edu/
http://www.ncacihe.org/

NORTHWEST ASSOCIATION OF SCHOOLS AND COLLEGES / COMMISSION ON COLLEGES
http://www.cocnasc.org/

SOUTHERN ASSOCIATION OF COLLEGES AND SCHOOLS / COMMISSION ON COLLEGES
http://www.sacscoc.org/

WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES / THE SENIOR COLLEGE COMMISSION
http://www.wascweb.org/

http://www.wascweb.org/senior/wascsr.html

THE AMERICAN ACADEMY FOR LIBERAL EDUCATION
http://www.aale.org/
http://www.aale.org/handbook.pdf

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Excerpts from the handbooks, guidelines, and criteria for accreditation of the five regional accrediting associations and the american academy for liberal education

MIDDLE STATES ASSOCIATION OF COLLEGES AND SCHOOLS COMMISSION ON HIGHER EDUCATION

http://www.msache.org/
http://www.middlestates.org/

STANDARDS
http://www.msache.org/msachar.pdf

CHARACTERISTICS OF EXCELLENCE IN HIGHER EDUCATION: Standards for Accreditation

P. 5: An institution of higher education seeks to provide the most conducive environment for achieving its mission and goals and for the pursuit of learning. One of the attributes which permits an educational institution to provide such an environment is integrity: integrity in the manner in which an institution specifies its goals, selects and retains its faculty, admits students, establishes curricula, determines programs of research, pursues its fields of service, demonstrates sensitivity to equity and diversity issues, allocates its resources, and serves the public interest.

P. 8: The admissions program should provide materials that help applicants make informed decisions and should encourage diversity in the student population, consistent with the institution's mission, goals, and resources.

P. 11: The process of faculty selection must be free of parochialism. Consideration should also be given to achieving diversity in areas such as race, ethnicity, gender, and age in faculty ranks.

P. 11: Educational institutions should exemplify within their own working environment those qualities which they endeavor to impart to their students. These include justice, equity, and respect for diversity and human dignity.

P. 12: A plan of studies should focus a student's attention on appropriately related subjects, introducing, where possible, a global perspective to emphasize the cultural diversity and interrelatedness of the contemporary world.

P. 21 (re governing boards): A board should be large enough for effective division of labor, yet not cumbersome. Consistent with institutional mission and sponsorship, members should represent different points of view, interests, and experiences as well as diversity in characteristics such as age, race, ethnicity, and gender.

NOTE: On p. 24 the bibliography of this document lists the following publication under "Additional Policy Statements and Publications": "Statement Concerning the Application of Equity and Diversity Principles in the Accreditation Process."

NEW ENGLAND ASSOCIATION OF SCHOOLS AND COLLEGES / COMMISSION ON INSTITUTIONS OF HIGHER EDUCATION

http://www.neasc.org/cihe/cihe.htmc
http://www.neasc.org/

STANDARDS

http://www.neasc.org/cihe/stancihe.htm

5.4 The institution employs an open and orderly process for recruiting and appointing its faculty members. Faculty participate in the search process for new members of the instructional staff. The institution observes pertinent legal requirements related to equal employment opportunity and compatible with its mission and purposes, addresses its own goals for the achievement of diversity of race, gender, and ethnicity. Faculty selection reflects the effectiveness of this process and results in a variety of intellectual backgrounds and training. Each prospective faculty member is provided with a written contract that states explicitly the nature and term of the initial appointment and, when applicable, institutional considerations that might preclude or limit future appointments.

6.2 In accordance with its mission and purposes, the institution in providing co-curricular services adheres to both the spirit and intent of equal opportunity and its own goals for diversity. It ensures that appropriate services and facilities are readily accessible to students in all programs in the institution, including members of historically under-represented, physically disabled, evening, part-time, commuter, and off-campus populations.

NORTH CENTRAL ASSOCIATION OF COLLEGES AND SCHOOLS / COMMISSION ON INSTITUTIONS OF HIGHER EDUCATION

http://www.nca.asu.edu/
http://www.ncacihe.org/

Overview: Criteria for Accreditation
http://www.ncacihe.org/overview/ovcriteria.html

In determining appropriate patterns of evidence for this criterion, the Commission considers evidence such as: … policies and practices consistent with its mission related to equity of treatment, nondiscrimination, affirmative action, and other means of enhancing access to education and the building of a diverse educational community;

http://www.ncacihe.org/resources/Handbook_Supplement.pdf

NORTHWEST ASSOCIATION OF SCHOOLS AND COLLEGES / COMMISSION ON COLLEGES

http://www.cocnasc.org/

STANDARDS
http://www.cocnasc.org/standards.html

Standard 3.D - Student Services
3.D.2 The institution, in keeping with its mission and admission policy gives attention to the needs and characteristics of its student body with conscious attention to such factors as ethnic, socioeconomic, and religious diversity while demonstrating regard for students' rights and responsibilities.

6.1 Policy on Affirmative Action and Nondiscrimination

Educational institutions should contain within their environment the essence of the qualities they endeavor to impart, including the essential of nondiscrimination. They have a responsibility to develop selection and promotion standards and procedures based on principles which consider qualities, aptitudes, or talents simply as they pertain to the requirements of the position, with due regard for affirmative action. Institutions are expected to review their policies and procedures regularly to determine their validity in keeping with these principles.

Adopted 1973/Revised 1987

SOUTHERN ASSOCIATION OF COLLEGES AND SCHOOLS / COMMISSION ON COLLEGES

http://www.sacscoc.org/
http://www.sacscoc.org/COC/criteria.htm

Criteria for accreditation in the Southern Association say nothing about racial diversity or affirmative action.

WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES / THE SENIOR COLLEGE COMMISSION

http://www.wascweb.org/
http://www.wascweb.org/senior/wascsr.html

EXCERPTS FROM *HANDBOOK OF ACCREDITATION* (January 2001)

http://www.wascweb.org/senior/handbook/standards.pdf

ON THE GUIDELINES (p. 15):
The Commission has identified in the Guidelines expected forms or methods of demonstrating performance related to certain Criteria for Review. In many of these cases institutions have requested specific interpretation of the Commission's meaning and, in others, the Commission has found through its extensive interactions with institutions and evaluation teams the need to identify the normative way institutions would be able to address the Criterion for Review referenced by the Guideline. By design, the Commission has not developed a Guideline for each Criterion for Review; nor in many instances are the Guidelines intended to address the full scope of the particular Criterion.

Where Guidelines are identified, the Commission is attempting to assist institutions with further interpretation of the Criteria for Review and provide intended ways institutions can demonstrate they have addressed them.

QUESTIONS FOR INSTITUTIONAL ENGAGEMENT: CRITERIA FOR REVIEW

1.5 Consistent with its purposes and character, the institution demonstrates an appropriate response to the increasing diversity in society through its policies, its educational and co-curricular programs, and its administrative and organizational practices.

{GUIDELINE: The institution has demonstrated institutional commitment to the principles enunciated in the WASC Statement on Diversity.}

QUESTIONS FOR INSTITUTIONAL ENGAGEMENT

3. How does the institution ensure that issues of diversity are appropriately engaged and that a climate of respect for a diversity of backgrounds, ideas and perspectives is fostered among its members?

TEACHING AND LEARNING: CRITERIA FOR REVIEW

2.2 … Baccalaureate programs engage students in an integrated course of study of sufficient breadth and depth to prepare them for work, citizenship, and a fulfilling life. These programs also ensure the development of core learning abilities and competencies including, but not limited to, college-level written and oral communication, college-level quantitative skills, information literacy, and the habit of critical analysis of data and argument. In addition, baccalaureate programs actively foster an appreciation of diversity, civic responsibility, the ability to work with others, and the capability to engage in lifelong learning.

FACULTY AND STAFF: CRITERIA FOR REVIEW

3.2 The institution demonstrates that it employs a faculty with substantial and continuing commitment to the institution sufficient in number, professional qualifications, and diversity to achieve its educational objectives, to establish and oversee academic policies, and to ensure the integrity and continuity of its academic programs wherever and however delivered.

THE AMERICAN ACADEMY FOR LIBERAL EDUCATION

http://www.aale.org/
http://www.aale.org/handbook.pdf

The AALE's *Handbook for Accreditation 1998-1999* says nothing about racial diversity or affirmative in its guidelines or criteria for accreditation.

[NOTE: The AALE is not a regional accrediting association. It is instead a national association that accredits institutions offering quality general education programs in the liberal arts. Like the regional associations, the AALE is listed by the Secretary of the U.S. Department of Education as a recognized national accrediting agency for the accreditation and preaccreditation of institutions of higher education and programs within institutions of higher education. As is true of the regional associations, a principal purpose of the Academy is to accredit these institutions and programs in order to enable them to participate in programs authorized under the Higher Education Act (as amended) and other Federal programs not authorized by this Act.]

APPENDIX II:

Tables from the 1975 and 1989 national surveys of faculty (technical reports and detailed tabulations), Princeton, Carnegie Foundation for the Advancement of Teaching. (1975 tables from unpublished material provided courtesy of the Carnegie Foundation)

Table 1:
From the 1975 Faculty Survey
Carnegie Foundation for the Advancement of Teaching
(unpublished material, courtesy of the Carnegie Foundation)

	Strongly Agree	Agree with Reservations	Disagree with Reservations	Strongly Disagree
The normal academic requirements should be relaxed in appointing members of minority groups to the faculty here	2.3	9.7	2.7	61.1
Issues raised by affirmative action are causing serious strains among the faculty in my department	6.8	15.9	31.7	45.5
More minority group undergraduates should be admitted here even if it means relaxing normal academic standards of admission	4.9	21.5	29.2	44.3
Affirmative action is unfair to white males	16.7	32.8	27.8	22.7
Any special academic program for black students should be administered and controlled by black people	4.0	20.5	41.0	34.5
On the whole, women have not been discriminated against in academic life	5.4	15.5	33.6	45.4
Most American colleges and universities are racist whether they mean to be or not	11.8	31.9	34.1	22.3
Affirmative action "labels" members of minority groups in such a way that they can never be judged on merit alone	14.2	41.9	31.5	12.4
Any institution with a substantial number of black students should offer a program in black studies if they wish it	38.0	38.4	16.0	7.7
Only the members of a minority group have the personal knowledge that is essential for teaching about that group	2.8	20.3	40.8	36.0
These days you hear too much about the rights of minorities and not enough about the rights of the majority	17.3	32.0	33.6	17.1
The only valid measure of equality between different groups in society is not equality of opportunity but equality of group achievement	5.7	25.2	40.2	28.9

Table 2:
From the 1975 Faculty Survey,
Carnegie Foundation for the Advancement of Teaching

Item: Universities and colleges should respond to any under-representation of minorities and women among a) their faculty and b) graduate and professional students by:

	Faculty Appointments (women)	Faculty Appointments (minorities)	Graduate Admissions (women)	Graduate Admissions (minorities)
Establishing firm goals and timetables and meeting them	10.0	9.6	9.1	9.1
Giving preference to women and minorities to increase their numbers, but without strict goals and timetables	8.0	8.6	9.4	11.1
Making special efforts to find more women and minority candidates, but giving no preference in appointment	46.0	46.6	41.0	41.4
Making appointments without any regard to race or sex	36.0	35.2	40.5	38.4

Table 3:
From the 1989 National Survey of Faculty,
Carnegie Foundation for the Advancement of Teaching

	Strongly Agree	Agree with Reserva-ions	Neutral	Disagree with Reserva-tions	Strongly Disagree
I am satisfied with the results of affirmative action at this institution	19.5	29.6	22.2	17.8	10.8
Issues raised by affirmative action are causing serious strains among the faculty in my department	4.7	10.4	22.2	20.2	42.5
The normal academic requirements should be relaxed in appointing members of minority groups to the faculty at this instituition	2.2	5.6	7.0	22.3	62.9

APPENDIX III:

Survey Results, Astin et al. 1991b. Tables from "The UCLA campus climate for diversity: findings from a campuswide survey conducted for the Chancellor's Council on Diversity"

TAKEN FROM:

THE UCLA CAMPUS CLIMATE FOR DIVERSITY:
Findings from a Campuswide Survey
Conducted for the
Chancellors' Council on Diversity

Alexander W. Astin
Jesús G. Treviño
Tamara L. Wingard

A.
[From Astin et al.: Table 6, p. 23]

	Percent agreeing "strongly" or "somewhat"			
Statement	Under-graduates	Graduates	Staff	Faculty
Diversity is good for UCLA and should be actively promoted by students, staff, faculty, and administrators	91	95	94	92
One problem with pursuing the goal of diversity is the admission of too many unprepared students	58	48	57	67
Affirmative action leads to the hiring of less qualified faculty and staff	41	31	39	45
UCLA is placing too much emphasis on diversity at the expense of enhancing its prestige as a top research university	40	27	38	38
Emphasizing diversity leads to campus disunity	34	17	34	24

B.
[From Astin et al.: Table 11, p.32]

	Percent who say proposal will improve (worsen) the climate for diversity			
Statement	Under-graduates	Graduates	Staff	Faculty
Admit applicants to UCLA without regard to race or ethnicity	58(3)	49(38)	49(34)	49(35)

APPENDIX IV:

California Association of Scholars. January, 1996. The Roper Center survey of faculty opinion about affirmative action at the University of California, sponsored by the California Association of Scholars, conducted December 7-19, 1995.
(Available at http://www.calscholars.org/roper.html)

CALIFORNIA ASSOCIATION OF SCHOLARS

THE ROPER CENTER SURVEY OF FACULTY OPINION ABOUT AFFIRMATIVE ACTION AT THE UNIVERSITY OF CALIFORNIA

Sponsored by the California Association of Scholars
Conducted December 7-19, 1995

FOR IMMEDIATE RELEASE

FACULTY SURVEY VINDICATES THE ABOLITION OF RACIAL AND GENDER PREFERENCES BY THE U.C. BOARD OF REGENTS

Berkeley, California, January 15, 1996 A telephone survey of 1,000 faculty members chosen at random at the nine campuses of the University of California which was conducted last month by the Roper Center for Public Opinion Research at the University of Connecticut vindicates the abolition of racial and gender preferences by the U.C. Board of Regents. The survey, the first of its kind in higher education, was sponsored by the California Association of Scholars, an organization of faculty members, administrators, trustees, and advanced graduate students at private and public colleges throughout the state with its headquarters in Berkeley, California.

The December, 1995 Roper Center survey found that a wide plurality of faculty at the University of California favors a policy of providing equal opportunity without resorting to racial and gender preferences. Voting members of the academic senates at U.C. were asked whether they favored granting preferences to women and certain racial and ethnic groups, or whether they favored promoting equal opportunities in these areas without regard to an individual's race, sex, or ethnicity. Forty eight percent favored the latter policy; only 31 percent favored the granting of racial and gender preferences.

The preferred policy is virtually identical with that recently adopted by the U.C. Board of Regents. On July 20, 1995, the Regents of the University of California voted on two resolutions. Section 2 of the first resolution (SP-1) said, "Effective January 1, 1997, the University of California shall not use race, religion, sex, color, ethnicity, or national origin as criteria for admission to the University of California or to any program of study." Section 9 of SP-1 said, "Believing California's diversity to be an asset, we adopt this statement:

BECAUSE INDIVIDUAL MEMBERS OF ALL OF CALIFORNIA'S DIVERSE RACES HAVE THE INTELLIGENCE AND CAPACITY TO SUCCEED AT THE UNIVERSITY OF CALIFORNIA, THIS POLICY WILL ACHIEVE A UC POPULATION THAT REFLECTS THIS STATE'S DIVERSITY THROUGH THE PREPARATION AND EMPOWERMENT OF ALL STUDENTS IN THIS STATE TO SUCCEED RATHER THAN THROUGH A SYSTEM OF ARTIFICIAL PREFERENCES." THIS RESOLUTION PASSED BY A 14-10 VOTE.

Section 1 of the second resolution (SP-2) said, "Effective January 1, 1996, the University of California shall not use race, religion, sex, color, ethnicity, or national origin as a criterion in its employment and contracting practices." This resolution passed by a 15-10 vote.

SP-2, which governs employment and contracting practices at the University of California, went into effect on January 1 of this year. SP-1 will take effect on January 1, 1997. The University is currently exploring ways to foster equal opportunity and access to the university without resorting to racial and ethnic preferences. Chancellor Chang-Lin Tien of U.C. Berkeley, in a widely applauded move, has pledged $1 million of U.C. Berkeley's funds to outreach efforts which will identify promising secondary school students throughout the state and prepare them for admission to the University. Educationally and economically disadvantaged students will be eligible for this program regardless of their race, sex, or ethnicity.

ROPER POLL CONFIRMS EARLIER, BUT LESS RIGOROUS, SURVEYS OF FACULTY OPINION ON AFFIRMATIVE ACTION

The Roper/CAS-sponsored poll is the first in higher education to apply state-of-the-art sampling methodology to the study of faculty opinion. To the best of our knowledge, all earlier studies of faculty opinion on this and other matters have relied on responses by faculty to mailed questionnaires with lower response rates. Nevertheless, the findings of earlier studies are consistent with those of the recently completed Roper study.

An important nation-wide survey of faculty opinion was conducted in 1975 by the Carnegie Foundation for the Advancement of Teaching. This study showed strong opposition to preferential policies in faculty hiring and promotions and in student admissions. When respondents in this study were asked how their University should respond to underrepresentation by women and minorities on the faculty and among their graduate and professional students, roughly 80% favored either 1) making special efforts to find more women and minority candidates, but giving no preference in appointment, or 2) making appointments without any regard to race or sex.

Unfortunately, more recent surveys by the Carnegie Foundation have included fewer items addressing affirmative action and diversity issues than in the 1975 survey. However, these more recent studies provide some inferential evidence that faculty opposition to preferential policies has changed very little in the intervening years, because the two items from the 1975 survey which were repeated in the more recent 1989 survey of faculty opinion by the Carnegie Foundation produced very similar results.

A 1991 study by Alexander Astin, Jesus G. Trevino and Tamara L. Wingard of the Higher Education Research Institute at UCLA (The UCLA campus climate for diversity: findings from a campus wide survey conducted for the Chancellor's Council on Diversity) found broad support for the idea of promoting diversity, but it also found that a significant percentage of the campus community had misgivings about many aspects of the university's diversity program. Nearly half of the campus respondents, on average, felt that the campus climate would be improved if the university abandoned preferential admissions policies. This and similar findings led the authors of this study (each of whom is a strong advocate of preferential policies in higher education) to caution the university against the aggressive pursuit of preferential policies, particularly in the area of undergraduate admissions. As the authors said:

UNDERGRADUATE ADMISSIONS IS ONE ISSUE WHICH CLEARLY DIVIDES PRACTICALLY ALL SEGMENTS OF THE UCLA COMMUNITY. THERE ARE SHARP DIVISIONS, FOR EXAMPLE,

> *WITHIN STAFF, STUDENT, AND FACULTY RESPONDENT GROUPS AS TO THE DESIRABILITY OF AN ADMISSIONS POLICY WHICH TAKES INTO ACCOUNT THE STUDENT'S RACE OR ETHNICITY. VERY FEW RESPONDENTS ARE NEUTRAL ON THIS ISSUE...CONSIDERING HOW DEEP THE DIVISION IS ON THE ADMISSIONS ISSUE WITHIN THE UCLA COMMUNITY, WE ARE NOT OPTIMISTIC ABOUT THE PROSPECTS FOR A QUICK SOLUTION TO THE PROBLEM...CONSIDERING THE WIDESPREAD CONSENSUS THAT WAS REACHED ON SO MANY OTHER CRITICAL ISSUES AND PROPOSALS WE FEEL THAT IT WOULD BE A MAJOR MISTAKE TO FOCUS A DISPROPORTIONATE SHARE OF OUR CAMPUS ENERGIES ON THE ADMISSIONS ISSUE, ESPECIALLY WHEN THE SAME ENERGIES CAN BE CHANNELLED INTO CONSTRUCTIVE AND POSITIVE ACTION PROGRAMS MORE OR LESS IMMEDIATELY. (THE UCLA CAMPUS CLIMATE FOR DIVERSITY, P. 180.)*

The UCLA study found evidence of a strong commitment by faculty, students, and administrators to diversity in the abstract. Over 90 percent of the campus community, on the average, agreed that "Diversity is good for UCLA and should be actively promoted by students, staff, faculty, and administrators." The study also found significant support for policies designed to promote diversity where there are no clear winners and losers. There was, for example, considerable support for the following kinds of programs: (1) having more events on campus that bring together different racial and ethnic groups; (2) involving more UCLA students in tutoring Los Angeles inner-city children; (3) having more art exhibits or music festivals featuring different racial/ethnic groups; (4) including more issues of diversity in student orientations; (5) conducting "teach-ins" on diversity issues etc. Such programs appear to be regarded by the campus community as non-zero-sum game proposals for fostering diversity. However, the UCLA study, like the December, 1995 Roper survey, found a significant drop-off in support for affirmative action plans that involves preferences-i.e., wherever there are clear winners and losers.

"USING RACE AND SEX AS A CRITERION" VERSUS OPPOSITION TO RACIAL AND GENDER PREFERENCES

The December, 1995 Roper Center telephone survey found that the faculty at the University of California favors non-race and non-gender based policies, but only if these are conjoined with a commitment to promoting diversity and equal opportunity by other means.

The first two items of the survey asked for respondents' views about the policy embodied in Regents' resolutions SP-1 and SP-2 prohibiting the use of race, sex, or ethnicity as criteria in university admissions, employment, and contracting, but without mentioning any commitment by the university to promoting equal opportunity by other means i.e., without any reference to Section 9 of SP-1, which reaffirmed the university's long-standing commitment to promoting diversity.

The first item asked, "Do you favor or oppose using race, religion, sex, color, ethnicity, or national origin as a criterion for admission to the University of California?" A bare majority (52%) favored using these as criteria when the option of pursuing equal opportunity and diversity by other means was not presented as an option. Even so, there was significant opposition even to this way of phrasing the question. About one-third (34%) flatly rejected the use of these factors in admissions. This 18 percentage point margin dropped to 8 points (47 percent favor and 39 percent oppose) when faculty were polled about the use of these criteria for employment and contracting practices at the University of California.

Since the Regent's decision on July 20, 1995 has attracted considerable national and even international attention, the Roper Center made the decision to use the exact language of SP-1 and SP-2 in the first two items of its questionnaire. Nevertheless, the language of SP-1 and SP-2 is not typical of most polling on this question, which usually phrases the question in terms of support or opposition to the granting of racial and gender preferences. (No direct reference to preferences is found in SP-1 and SP-2, though such a reference is found in Section 9 of SP-1, which commits the university to promoting racial and ethnic diversity without resorting to "a system of artificial preferences.")

It is likely that the responses to the first two items of the survey would have been significantly different if they had been phrased in terms of the granting of preferences. The latter is the terminology that is typically found in the law and in most polling on this issue. Extensive polling since the late 1960s has shown widespread opposition to the granting of preferential treatment on the basis of race, sex, or ethnicity in the general population, even when the granting of such preferences is framed in a positive light in the question itself (e.g., even when preferential treatment is presented to respondents as an effort to compensate for past discrimination against certain groups). Typically, approximately 70% of respondents say that they are opposed to preferential treatment on the basis of race, sex, or ethnicity for any reason.

The Roper poll has shown that the great majority of faculty at U.C. believes that racial and gender diversity should be a goal of university policy. This makes it likely that a clear majority of faculty will reject any failure or refusal by the university to "take race and sex into consideration as a criterion" in any way. However, it may not be immediately apparent to respondents that the use of race, sex, or ethnicity as a criterion for decision making in particular instances necessarily involves racial discrimination, and that the policy that they actually favor is that of pursuing diversity without actually preferring or discriminating on this basis.

The dangers of using phraseology in public opinion research that does not clearly force a decision about preferences (and therefore about discrimination) was highlighted recently by a national survey of 240,000 freshmen which was conducted by the Higher Education Research Institute at UCLA. The study, which was released on January 8, 1996, found that, although 70 percent of students surveyed support giving "special consideration" to race in college admissions, 50 percent said that they believe affirmative action should be abolished. And although 70.6 percent of the students surveyed support special consideration for blacks, only slightly fewer69.3 percents aid whites deserve the same break.

This finding demonstrates with particular clarity the dangers of survey research that uses the more equivocal language of "taking into consideration" and "using as a criterion." As a matter of simple logic, one cannot give "special consideration" to every individual of a given set. This rather obvious logical point apparently eluded even this year's entering freshmen at America's colleges and universities. It is, however, even harder to miss the point that one cannot prefer someone on the basis of race, sex, or ethnicity without discriminating against someone else on that basis. That is why the language of preferences is the preferred terminology for public opinion research on this issue. As the responses to item 3 show, faculty at U.C., like most Americans, balk at the granting of preferential treatment to individuals on the basis of their race, sex, or ethnicity and it is the granting of racial and gender preferences which is at the heart of the controversy about affirmative action within the university and elsewhere.

HOW DOES THE FACULTY USE THE TERM 'AFFIRMATIVE ACTION', AND WHAT KIND OF AFFIRMATIVE ACTION DOES IT FAVOR?

The Roper survey shows that it is unwise to use the term "affirmative action" in polling on this issue. Roper found that this term means very different things to different faculty members. The divergences are so marked that the term appears to have no standard or common meaning in faculty discourse.

In the Roper survey, faculty were asked to express how they use the term "affirmative action" by choosing which one of the following statements best summarizes their own definition of the term: "Affirmative action means granting preferences to women and certain racial and ethnic groups," or "Affirmative action means promoting equal opportunity for all individuals without regard to their race, sex, or ethnicity." The study found marked divergences in the way faculty use this term. Forty-three percent (43%) of the faculty said that promoting equal opportunity for all individuals rather than granting preferences comes closer to their definition of the term. Thirty seven percent (37%) said that granting preferences to women and certain racial and ethnic groups comes closer to their definition of the term.

ROPER'S FINDINGS RAISE TROUBLING QUESTIONS ABOUT GOVERNANCE BY U.C. ADMINISTRATION AND HIGHER EDUCATION ORGANIZATIONS GENERALLY

The Roper Center survey demolishes the claim that the faculty at U.C. wants preferential policies. Faculty members at the university clearly don't want the university to be indifferent to diversity concerns, but they also prefer affirmative action in the original sense: promoting and ensuring equal opportunity in admissions, employment, and contracting without regard to an individual's race, sex, or ethnicity. This favored alternative is identical with the policy which the U.C. Board of Regents adopted on July 20 of last year. That policy abolishes racial and gender preferences at the University of California in admissions, employment, and contracting, while affirming the university's commitment to the pursuit of diversity through means other than the use of "artificial preferences."

It is startling to compare these survey findings with recent official policy statements on affirmative action by the university and by virtually every representative body within the university. The divergences, which are very stark, raise very troubling questions about the extent to which internal governance mechanisms within the university have failed rather dramatically to accurately reflect faculty opinion on one of the most important public policy issues of our time.

To judge by the official position of the University before the Regent's vote, and by statements and policy positions by virtually every official body within the university both before and after the vote, no impartial observer would even suspect that any significant portion of the faculty actually favors the abolition of racial and gender preferences. When the policy change was first proposed by some members of the Board of Regents, the University could have seized the occasion to engage in a searching and thoughtful debate on the issue one that was long overdue. Instead, the well-entrenched advocates of the challenged policy chose to circle the wagons.

The appearance of unanimous opposition to the Regent's policy by all bodies claiming to represent the University and faculty opinion within it has been virtually complete. In an unprecedented move, the outgoing President of the University, Jack Peltason, together with all nine chancellors, publicly rejected the Regents' policy initiative, essentially challenging the Regents' authority to bring the university in line with public sentiment and the direction of developing law on this issue, and in response to questioning by the Regents about existing policies, the University stonewalled and prevaricated. Two months before the Regents' vote, the university released a study of the probable impact of the proposed policy change that was so flawed it elicited a scathing column from normally restrained (and liberal) writer Peter Schrag of the McClatchy Papers. "The 'analysis' University of California officials submitted to the regents last week regarding affirmative action in UC admissions piles confusion on misdirection," Schrag said. "Rather than the impartial report it's represented to be, it's a clumsy defense of existing race preferences. It combines straw-man comparisons with statements so internally contradictory they make your head spin" (Orange County Register, May 26, 1995).

The University took the official line that it used race as only one of many factors in admissions decisions. Anyone who was familiar with U.C.'s admissions procedures knew that on some campuses and in some professional schools this was widely at variance with the facts, and critics of the policies quickly provided data demonstrating that the claim was false. Information that was publicly available to the critics through the university itself showed, for example, that individuals of one particular ethnicity were admitted at one of U.C.'s medical schools at 19 times the rate of applicants of another ethnicity, even though the former were significantly less qualified on the basis of academic criteria. (Investors Business Daily, March 21, 1995, "Making California color-blind.")

Advocates of preferential policies, who typically claim to speak on behalf of the entire faculty, continue to work tirelessly to overturn the Regents' decision. Jerome Karabel, professor of sociology at U.C. Berkeley, has spear headed two faculty drives, the first in defense of the preferential policies the Regent's decision rescinded, the second protesting the decision on procedural grounds. A committee of the American Association of University Professors (AAUP), whose genesis is somewhat murky, but which nevertheless claims to speak on behalf of all of the organization's 44,000 members, was recently formed to investigate the Regents' decision in the light of the AAUP's "long standing commitment to affirmative action," and to take a "hard look at the way in which political pressures are intruding into traditional institutional governance practices." This seven-member committee includes committee chair Joan Wallach Scott, Professor of Social Science at the Institute for Advanced Study in Princeton, and Robert Atwell, outgoing President of the American Council on Education. The committee has said that it will issue a report on the matter sometime before May, 1996.

To our knowledge, none of these official bodies or self-appointed spokespersons for the professorate has ever shown any interest in ascertaining in a scientific manner the actual views of the members or organizations for which they claim to speak. Nor is this just a matter of a demonstrated lack of interest in finding new evidence: it extends to ignorance about, or indifference to, the research evidence that has been available for some time. It is true that past studies have not utilized random sampling techniques, and are methodologically weak for that reason. At the very least, however, the previous findings should have suggested caution. If advocates of preferential policies who claim to speak on behalf of others know of research evidence which is at variance with the findings of the December, 1995 Roper survey, they should make this information widely available.

It is likely that the disparity between faculty opinion and official statements simply confirms what is commonplace for students of organizational behavior that any organization can be controlled by ten percent of its members, provided they are sufficiently determined and well-organized. For twenty years or more, no one has been appointed to any administrative position of importance in the university who has not been prepared to publicly endorse race- and gender-based preferential policies, or at least to remain silent about any reservations or doubts he or she may have had about them. As a result of this history, there is presently in the University a large "affirmative action" bureaucracy with an enormous amount of power.

While faculty senates pass resolutions which purport to represent the views of the entire faculty, the meetings of the senates are usually sparsely attended, and often only by those whose strong interests in the outcomes make them rather unrepresentative of the university community as a whole. This has been true of the university for many years. The same phenomenon was noted twenty-five years ago by Professor John Searle of U.C. Berkeley in his book on the campus wars of the 1960s:

THE STRIKING THING [ABOUT FACULTY MEETINGS AROUND CONTENTIOUS ISSUES] IS THE EXTENT TO WHICH A SMALL GROUP OF REALLY DETERMINED LEFT-WING FACULTY WHO KNOW EXACTLY WHAT THEY WANT AND ARE PREPARED TO SEIZE THE RHETORICAL

INITIATIVE AND FIGHT FOR WHAT THEY WANT, CAN EXERT AN INFLUENCE WILDLY DISPROPORTIONATE EITHER TO THEIR OWN NUMBERS OR THE SIZE OF THEIR CONSTITUENCY IN THE FACULTY. (THE CAMPUS WAR, NEW YORK: THE WORLD PUBLISHING COMPANY, 1971, PP. 147-148.)

What Searle observed about the university twenty years ago prefigured what has come to be known in more recent times as "political correctness." Today, after their long march through the institutions, important bastions of power within the university have been captured by those who proclaim that everything, including the personal, is political; ironically, these faculty members now accuse anyone who dares to challenge them of politicizing the university. There has been an abject failure on the part of the university to accurately reflect faculty opinion in today's political climate, which makes many faculty clearly reluctant to speak out. The faculty needs fewer change agents dedicated to telling their colleagues what they ought to think on controversial matters of public policy, and more who simply wish to accurately reflect, articulate, and represent their views.

SCIENTIFIC POLLING AND ITS POTENTIAL IMPACT ON SOME DEEPLY CONTESTED ISSUES IN HIGHER EDUCATION

The CAS believes that the Roper Center survey which it has sponsored has introduced a powerful tool with potentially wide applications in higher education. Such studies should be within the financial reach of many faculty and alumni organizations at other large colleges and universities, both public and private, who may share the CAS' interest in determining faculty opinion at their institutions in a scientifically rigorous way. The survey research method may be of particular interest to organizations like the recently formed National Alumni Forum in Washington, D.C. (phone 202.467.6787), one of whose chief purposes is to persuade alumni and university governing boards to support academic programs and institutions that it believes are worthy of support.

The Roper survey has demonstrated that modern polling can be used to determine faculty opinion accurately and relatively cheaply. For too long, the academy has had as its most publicly visible spokespersons those whose claim to represent faculty opinion fairly and accurately has always been questionable. These days may soon be over.

EXACT WORDING OF ROPER CENTER QUESTIONNAIRE ITEMS; RESPONSES

For further details contact The Roper Center for Public Opinion Research, University of Connecticut, (203) 486-4634 Sample size: n=1,001; cooperation rate 80+ percent; margin of error=3.5%

1. "Do you favor or oppose using race, religion, sex, color, ethnicity, or national origin as a criterion for admission to the University of California?"

Favor	52%
Oppose	34%
No opinion	7%
DK	7%

2. "Do you favor or oppose using race, religion, sex, color, ethnicity, or national origin as a criterion in employment and contracting practices at the University of California?"

Favor	47%
Oppose	39%
No opinion	7%
DK	7%

3. "I'd like to read two statements. Please tell me which one best describes the policy you believe the University of California should pursue.

First, the University should grant preferences to women and certain racial and ethnic groups in admissions, hiring and promotions.
Second, the University should promote equal opportunities in these areas without regard to an individual's race, sex, or ethnicity.

Which statement, the first or the second, describes the policy you think the University should pursue?"

First statement	31%
Second statement	48%
Both	3%
Neither	12%
DK	6%

4. "The term 'affirmative action' has different meanings to different people. I'm going to read two definitions of the term 'affirmative action.' Please tell me which one best describes what you mean by the term.

First, affirmative action means granting preferences to women and certain racial and ethnic groups.
Second, affirmative action means promoting equal opportunities for all individuals without regard to their race, sex, or ethnicity.

Which statement, the first or the second, comes closest to your own definition of affirmative action?"

First statement	37%
Second statement	43%
Both	2%
Neither	14%
DK	4%

BREAKDOWN OF RESPONDENTS BY CAMPUS:

Berkeley	15%
Davis	17%
Irvine	8%

Los Angeles	17%
Riverside	8%
San Diego	12%
San Francisco	6%
Santa Barbara	10%
Santa Cruz	6%

BREAKDOWN OF RESPONDENTS BY RANK:

Professor	58%
Associate Professor	22%
Assistant Professor	19%
Lecturer	1%

BREAKDOWN OF RESPONDENTS BY SEX:

Male	80%
Female	20%

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APPENDIX V:

Press Release and Executive Summary, National Association of Scholars, National Faculty Survey Regarding the Use of Sexual and Racial Preferences In Higher Education, 16 to 28 October 1996. (Also available at http://www.nas.org/reports/roper/roper9611.htm)

NATIONAL
ASSOCIATION
OF
SCHOLARS

PRESS RELEASES & ARTICLES

FOR IMMEDIATE RELEASE

Large Majority of University Faculty Opposed to Racial and Sexual Preferences in Student Admissions & Faculty Hiring, New Survey Reveals

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Princeton, New Jersey, 20 November 1996 — A majority of the nation's higher education faculty is opposed to racial and sexual preferences in student admissions and faculty employment at America's universities, according to a new survey conducted by The Roper Center for Public Opinion Research and released today by the National Association of Scholars (NAS).

Even more surprising, nearly two-thirds of American professors would support a ban on preferences at their institution similar to California's recently passed Proposition 209, the California Civil Rights Initiative (CCRI). "The leaders of the higher education establishment would have us believe that racial and sexual preferences enjoy intense, widespread support throughout academia," said NAS president Stephen H. Balch. "Yet these findings make it clear that the college and university presidents who rushed to denounce CCRI are out of touch with or simply are not accurately representing the faculty of their institutions."

Key findings of the survey of a nationally representative sample of faculty from four-year colleges and universities include:

- 60 percent of professors felt their institutions "should not grant preference to one candidate over another in faculty employment decisions on the basis of race, sex, or ethnicity," whereas only 29 percent supported such preferences.
- 56 percent felt that their institutions "should not grant preference to one applicant over another for admission on the basis of race, sex, or ethnicity," whereas only 32 percent supported such preferences.
- Despite the overwhelming opposition of faculty members to the use of racial and sexual preferences, more than 8 in 10 faculty members claiming familiarity with their institution's faculty employment practices report that such preferences are being utilized; 6 in 10 claiming familiarity with student admission practices report the use of such preferences in admitting decisions.
- 64 percent of the nation's professors approved of a policy which stated that their institutions "shall not discriminate against, or grant preferential treatment to, candidates in faculty employment decisions on the basis of their race, sex, or ethnicity." 61 percent agreed when the same phrase applied to "applicants for admission."

"As other colleges and university systems consider the abolition of preferences, we trust that this survey will help facilitate reasoned discussion as opposed to emotional hyperbole. The fact is that the academy's most important citizens, its professors, reject group preferences based on race, ethnicity, or sex by overwhelming margins," concluded Balch.

> The National Association of Scholars is the only academic organization dedicated to the restoration of intellectual substance, individual merit, and academic freedom in the university.

For more information, contact Dr. Stephen H. Balch, President, or Dr. Bradford P. Wilson, Executive Director.

The Executive Summary is available at http://www.nas.org/roper/exsum.htm*

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*Location moved 6/99: http://www.nas.org/reports/roper/exsum.htm

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Updated June 1999

NATIONAL
ASSOCIATION
OF
SCHOLARS

REPORTS

National Faculty Survey
Regarding the Use of Sexual and Racial Preferences
In Higher Education

16 to 28 October 1996

Executive Summary

Conducted by:

Roper Center for Public Opinion Research

University of Connecticut
P.O. Box 440
Storrs, CT 06268
Telephone: 860.486.-4440

Conducted For:

National Association of Scholars

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Executive Summary

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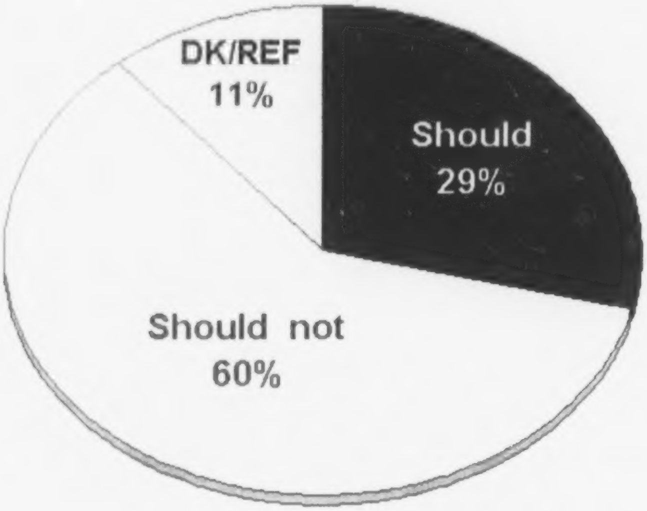
The majority of the nation's higher education faculty is opposed to racial and sexual preferences in student admissions and faculty employment at America's universities. Further, almost two-thirds of American professors would support a ban on preferences at their institutions similar to California's recently passed Proposition 209. Despite faculty opposition to preferences in student admissions and faculty employment, the vast majority of professors who are familiar with their institution's policies report their schools have either formal or informal policies which grant preference to individuals based on gender, race and ethnicity. These are among the many findings from a national survey of 800 full-time faculty at four-year colleges and universities conducted by the Roper Center For Public Opinion Research during 16 to 28 October 1996.

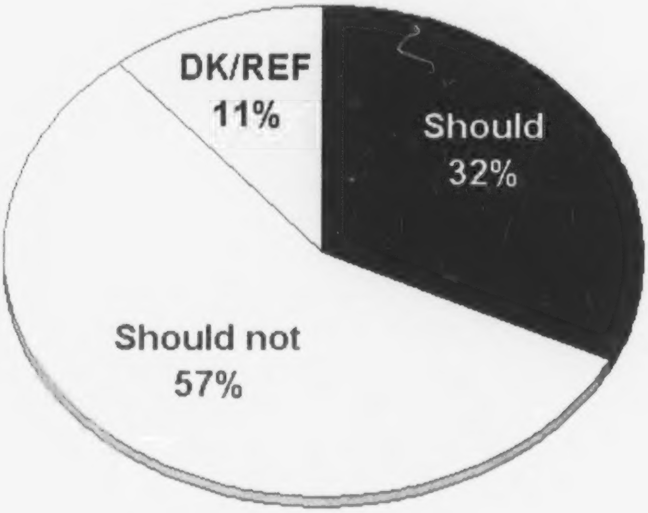
- **A solid majority of the nation's higher education faculty is opposed to racial and sexual preferences in student admission and faculty employment.**

Sixty percent of professors surveyed felt their institutions "should not grant preference to one candidate over another in faculty employment decisions on the basis of race, sex or ethnicity." Only slightly less, 56%, felt the same regarding student admissions.

Q# 3) Do you feel that [NAME OF INSTITUTION] should or should not grant preference to one candidate over another in faculty employment decisions on the basis of race, sex or ethnicity?



Q# 4) Do you feel [NAME OF INSTITUTION] should or should not grant preference to one applicant over another for admission on the basis of race, sex or ethnicity?



Although majorities of professors in every field of study are against preferences, there are significant differences in proportion among the disciplines. Faculty in the traditional liberal arts fields of Social Science and Arts/Humanities show only a slight plurality opposed to preferences (47% opposed to and 42% in favor of preferences in faculty employment; and 43% in favor and 45% opposed to preferences in student admissions). Faculty who teach in the Business, Physical Science and Engineering departments are the least in favor of preferences. For instance, only 25% of professors of Biological Science are in favor of sexual and racial preferences in student admissions, while 68% are opposed. Faculty at public universities are significantly more opposed to preferences than their counterparts at private institutions. Regarding student admissions, only 29% of public university faculty support preferences while 61% oppose them. The results for private university faculty show a more even split, 41% to 45% respectively.

Differences in opinion between the genders are evident, though not as pronounced as one might suspect. Thirty-five percent of female professors support preferences in faculty employment decisions while 55% oppose them. The results for male faculty are 27% to 61% respectively. The responses regarding student admissions are even closer. Thirty-six percent of female professors support preferences in this area, while 51% oppose them. The responses for male faculty are 31% to 58% respectively. There are no significant differences across the nation's geographic regions, or due to the size of the school.

- **Roughly two-thirds of the nation's higher education faculty approve of California's Proposition 209.**

Sixty-four percent of the nation's professors approved of a policy which stated that their institution "shall not discriminate against, or grant preferential treatment to candidates in faculty employment decisions on the basis of their race, sex or ethnicity." Sixty-one percent agreed when the same phrase applied to "applicants for admission." (see below). This wording closely resembles the phrasing of California's recently passed proposition 209. As with the more general preference questions, support for this policy was strongest among faculty who taught in the Physical Science, Engineering and Business fields, among public university faculty and among male professors.

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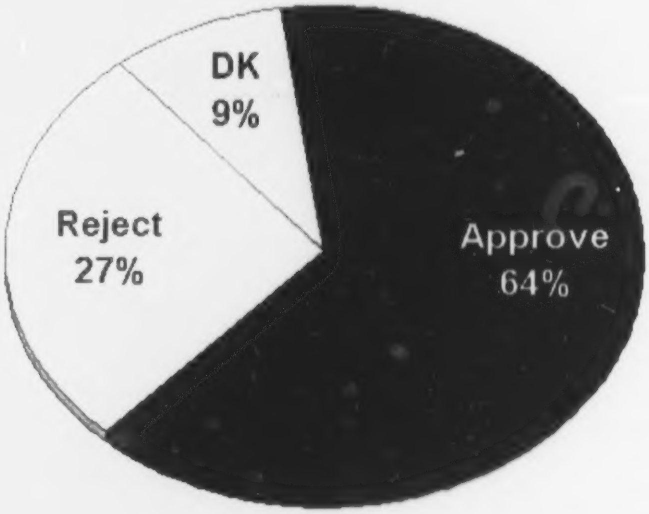
Q# 7) Please consider the following policy: [NAME OF INSTITUTION] shall not discriminate against, or grant preferential treatment to candidates in faculty employment decisions on the basis of race, sex or ethnicity

If you had to vote to adopt or reject this as a policy at your institution, how would you vote?



Q# 8) Please consider the following policy: [NAME OF INSTITUTION] shall not discriminate against, or grant preferential treatment to applicants for admission on the basis of race, sex or ethnicity?

If you had to vote to adopt or reject this as a policy at your institution, how would you vote?

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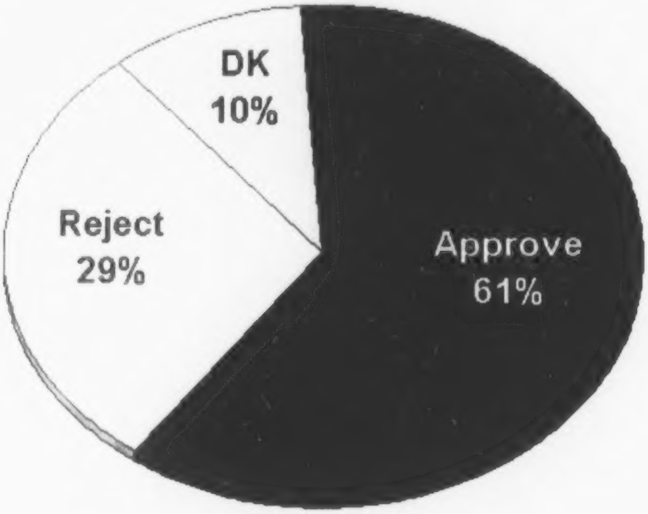
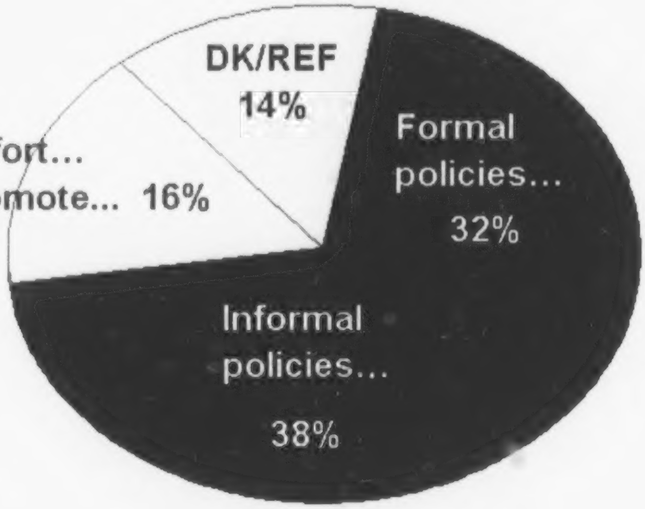


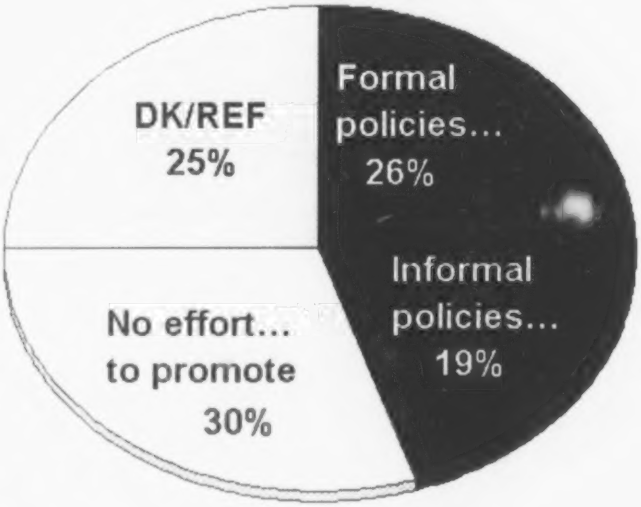
- **Most universities maintain formal or informal policies which grant preference to student and faculty applicants on the basis of gender, race and ethnicity.**

According to the nation's faculty, most universities and colleges maintain some form of preference policies, whether officially or informally. Of professors who are familiar with their institution's faculty employment policy, over 8 in 10 state their university has either formal or informal policies which give preference based on gender or race. Regarding student admissions, 6 in 10 professors familiar with their institution's formal and informal policies state that preference is given to certain applicants on the basis of race and gender

> **Q# 5) Putting aside your own opinion, which of the following statements best describes your institution's policy for faculty employment decisions: a) First, my institution has formal policies or procedures that give preference to candidates on the basis of their race, sex and ethnicity; b) Second, while my institution has no formal policies or procedures for giving such preference, administrators often communicate the clear expectation that a candidate's race, sex or ethnicity should be taken into account; c) Third, no effort is made by my institution to promote the use of preferences based on race, sex or ethnicity**



Q# 6) Putting aside your own opinion, which of the following statements best describes your institution's policy for student admissions: a) First, my institution has formal policies or procedures that give preference to applicants on the basis of their race, sex and ethnicity; b) Second, while my institution has no formal policies or procedures for granting preferences, significant weight is given in admission decisions to an applicant's race, sex or ethnicity; c) Third, an applicant 's race, sex or ethnicity is not a factor in admission decisions at my institution

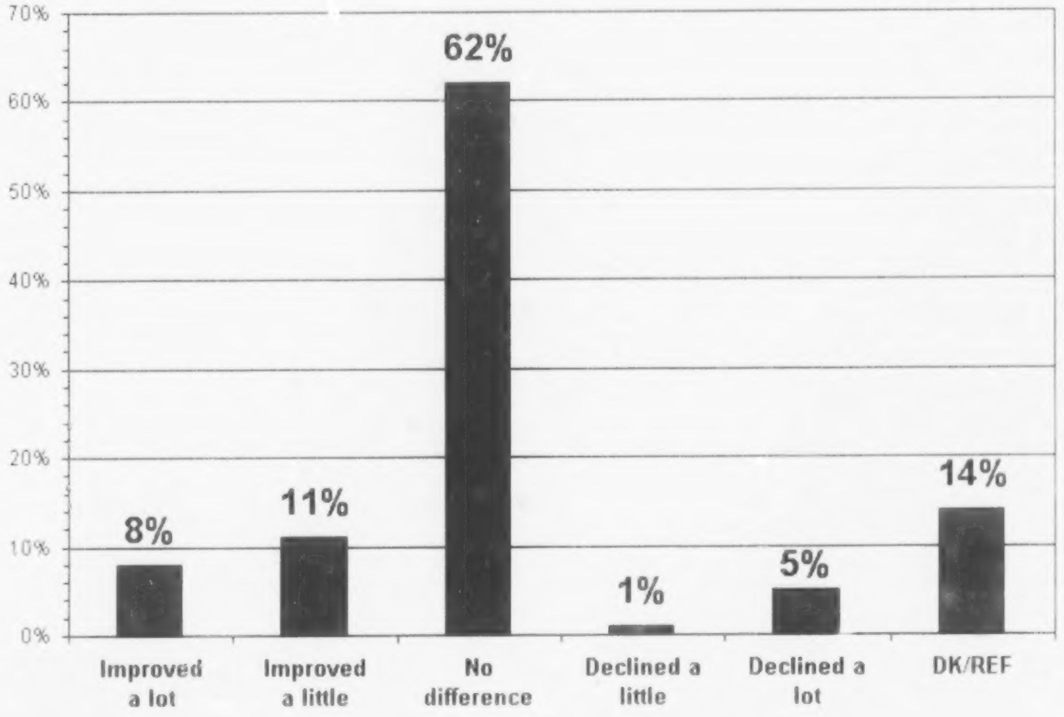


According to the survey results, formal preference policies are somewhat more prevalent at public than private schools. For instance, 40% of professors at public universities who are familiar with their school's policies state their institution has formal preference policies regarding faculty employment, while only 26% of professors at private colleges say so. Informal policies are reported to be equally likely at both public and private schools.

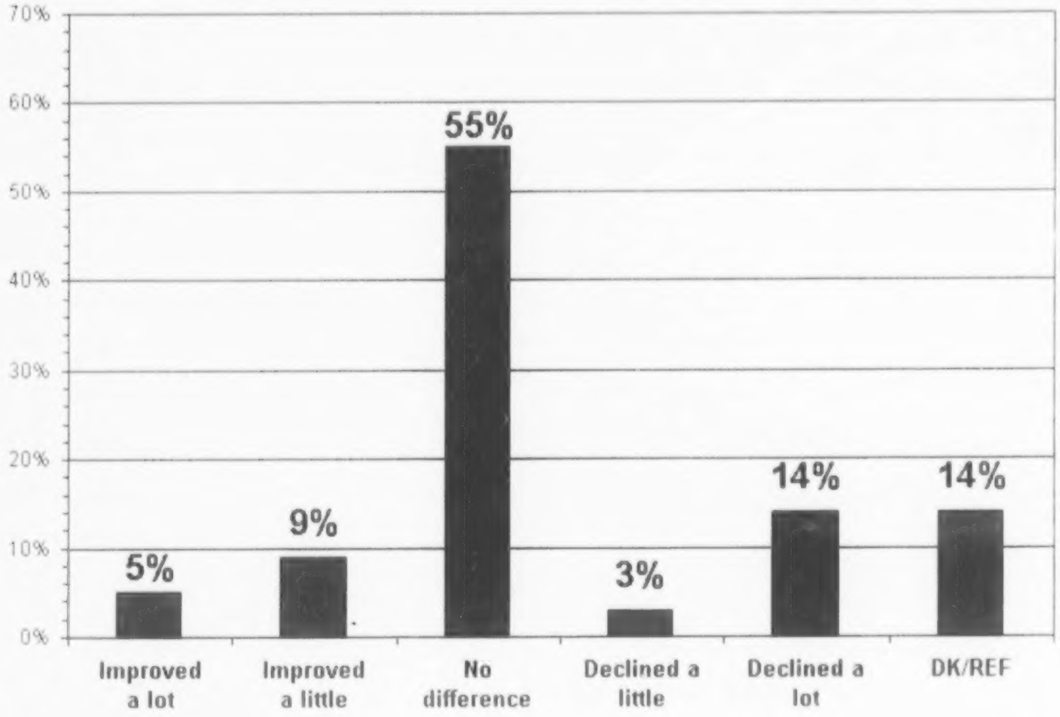
- **Preference policies are seen as having little effect, either positive or negative, on faculty and student quality.**

Of faculty who teach at schools where formal/informal preference policies exist, solid majorities feel such policies are having little effect on student and faculty quality. Regarding faculty academic quality, 62% of professors state preference policies have no effect, while 19% feel these policies have improved the general quality of faculty while 6% feel quality has declined as a result. Regarding student academic quality, 55% of faculty feel preference policies are having no effect, while 14% believe student quality is improving as a result, and 17% feel it is declining.

Q# 5A) In your opinion, has the academic quality of the faculty at your institution improved or declined as a result of giving preference in employment decisions on the basis of race, sex or ethnicity, or hasn't this made any difference?



Q# 6A) In your opinion, has the academic quality of students at your institution improved or declined as a result of giving preference in admission on the basis of race, sex or ethnicity, or hasn't this made any difference?



- **The nation's faculty is markedly more liberal ideologically than the general public.**

As the chart below shows, the nation's faculty is twice as liberal and only half as conservative as the general public.

Q: Which of the following terms comes closest to the way you would characterize yourself politically?

	Faculty	General Public
Conservative	17%	35%
Moderate	43%	42%
Liberal	37%	17%
DK/REF	4%	5%

Note: General public results were obtained from a national survey conducted by the Gallup Organization for CNN/*USA Today*, 23 to 25 August 1996.

Methodology

The survey was conducted by telephone by the Roper Center For Public Opinion Research at the University of Connecticut. The interviewing was conducted 16 to 8 October 1996. Forty 4-year colleges were randomly selected from a complete list of all 4-year colleges nationwide. From this group, 800 full-time, tenured or tenure-track faculty were systematically (and proportionally, based on the number of faculty at each institution) selected for interviewing. The margin of error for a sample this size is approximately 4% at the 95% confidence interval.

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Subgroup Sample Sizes

Male Faculty	599
Female Faculty	201
Arts/Humanities/Social Science	319
Physical Science/Health/Engineering/Computers	352
Business/Professional	118
Assistant Professor	212
Associate Professor	264
Full Professor	324
Northeast	162
Midwest	231
South	231
West Coast	176
Public	587
Private	213
Small School (< 250 faculty)	181
Medium school (251 - 599 faculty)	214
Large school (600+ faculty)	405

Note: complete results for all groups are available from the Roper Center

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APPENDIX VI:

Excerpts (on diversity, multiculturalism, preferences, and affirmative action) from the FAST Zogby Academic Life Survey, April 7, 2000. Available in full at http://www.gofast.org/academiclifesurvey.htm.

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FAST - Zogby Academic Life Survey

REPORT ON

ACADEMIC LIFE SURVEY

Submitted to:
Foundation for Academic Standards & Tradition

Submitted by:
Zogby International
John Zogby, President
Rebecca Wittman, Managing Editor
John Bruce, Systems Manage

Edward Byrne, Writer

April 7, 2000

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ACADEMIC LIFE SURVEY

I. Methodology and Sample Characteristics

II. Executive Summary

III. Narrative Analysis

Methodology and Sample Characteristics

Zogby International conducted phone interviews regarding academic life with 1,004 college students nationwide, who were selected at random. All calls were made from Zogby International headquarters in Utica,

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N.Y., from January 8 to January 24, 2000. The margin of error is +/- 3.2%. Margins of error are higher in sub-groups.

The student sample was compiled from a list of colleges and universities from every state in the country, including a mixture of Ivy League and state universities, and small public and private colleges. A typical cross-section includes Salisbury State to Johns Hopkins University in Maryland, and Babson College to Harvard in Massachusetts.

Characteristic	Frequency	Percent
Total	1004	100.0
East	298	29.7
South	279	27.8
Central/Great Lakes	280	27.9
West	147	14.6
Public college	776	77.3
Private college	223	22.2
Specialized college	184	18.3
Liberal Arts	748	74.5
Age 18	152	15.1
19	221	22.1
20	151	15.0
21	127	12.7
22	85	8.5
23-30	149	14.9
31+	116	11.6
White	812	81.4
Hispanic	35	3.5
African American	52	5.2
Asian	32	3.2

Others (race)	67	6.7
Registered voters	780	77.7
Not registered	224	22.3
Democrat	243	31.3
Republican	247	31.8
Other/minor party	244	31.4
Conservative	214	21.3
Very conservative	20	2.0
Moderate	432	43.1
Liberal	219	21.8
Progressive/very liberal	69	6.9

Less than $15,000	98	10.2
$15,000-$24,999	83	8.6
$25,000-$34,999	114	11.8
$35,000-$49,999	153	15.9
$50,000-$74,999	216	22.4
$75,000 or more	219	22.7
Male	409	40.7
Female	595	59.3

The student population chosen at random in the academic life survey is 59.3% female, 40.7% male, and 45.1% report family incomes exceeding $50,000.

Three-quarters are registered to vote, and they are divided evenly among Democrats, Republicans and independents, and those who are enrolled in minor parties. Moderates comprise 43.0%; conservatives, 21.3%; very conservative, 1.9%; liberals, 21.8%, and the very liberal, 6.8%.

Public college students outnumber private college students, 3 to 1. One-quarter of the students are 23-years-old or older. Liberal arts students form 74.5% of the respondents; specialized colleges, 18%. Three-quarters of the sample disclosed their grade point averages, with nearly half (44.9%) of the sample reporting a somewhat surprising grade point average (GPA) of between 3.5 and 4.0.

EXECUTIVE SUMMARY

Given the large majority responses to some questions, students report general satisfaction with their education and educators. Most rate their education as good (49.4%) or excellent (40.8%), and 94.2% said they are being intellectually challenged.

Other responses, however, point to significant ways in which their education could be improved and suggest significant dissatisfaction in important academic areas. Two in three students want to be "challenged more." Four in five said colleges need to focus more on traditional subjects leading to valuable skills. Three in five said there is too much politics in the classroom.

The issue of ethnic diversity stands out as an area where students disagree with curent trends in college education. While 84.3% of students said ethnic diversity on campus is important, 86.4% oppose racial preferences in admissions, favoring fairness instead. Almost all (95.7%) said diversity of ideas (56.8%) and high academic standards (38.9%) are more important to a quality education than achieving ethnic diversity (2.9%).

Survey responses are engaging in their complexity. Here are some of the salient findings:

- 90.2% rate the quality of their education as good or excellent.
- 68.7% said they would like to be challenged more intellectually.
- 84.3% said ethnic diversity on campus is important, and 84.1% rate their campuses as diverse. But only 2.9% said that achieving ethnic diversity is more important to a quality education than exposing students to a diversity of ideas and setting high academic standards.
- 78.9% said lowering the entrance requirements for some, regardless of the reason, is unfair to the entire student body.
- 95.7% said diversity of ideas and high academic standards are more important to a quality education than achieving ethnic diversity.
- 77.3% said schools should not give minorities preference in the admissions process.
- 87.1% said general education courses like history, writing, English and the arts are valuable.

- 71.8% said much of the subject matter that students should have learned in high school is taught in college.
- 41.7% said their education sometimes suffers from "dumbing down" in the classroom.
- 78.3% said colleges should focus more on traditional subjects that help students acquire valuable skills.
- 55.4% said an atmosphere of political correctness restricts what people say and learn.
- 57.9% said there is too much politics in the classroom.
- 56.9% said that because there are few common values that bind all Americans, colleges should focus more on our differences and offer courses in gay and lesbian, Latino, and African-American studies. But an identical 56.9% said that "too much" emphasis divides students rather than unite them.
- Two-thirds said professors are unfair to students expressing either liberal or conservative views. But 63.3% said professors do not suppress intellectual freedom, especially with regard to political and social views.
- Three-quarters said they are getting their money's worth in college (when measured by quality of education); one-quarter said they are not. But only 30.1% said an expensive college education is intrinsically valuable.
- 75.3% said colleges should do less marketing and make degree studies more valuable.
- A majority of juniors and seniors said that their schools do not have their best interests in mind.
- Almost half the students (44.9%) report a GPA between 3.5 and 4.0.
- 66.5% said that inflating grades is bad because it gives an inaccurate view of students' abilities and keeps many students from improving their skills.

Diveristy and Fairness

Student opinions reveal a challenging dilemma: they want ethnic diversity on campus, but they don't want to compromise high standards or fairness to get it.

By an 8-to-l margin, they said ethnic diversity is important on campus and, also by

8-to-1, they report that their campuses are ethnically diverse. But an extraordinary 95.7% said diversity of ideas and high academic standards are more important to a quality education than achieving ethnic diversity Only 2.9% said achieving ethnic diversity is most important to a quality education.

When students were asked which is more important in admission decisions -- fairness in meeting academic standards or achieving ethnic diversity -- 86.4% said fairness.

When asked flat out whether minorities should get preferences in admissions, 77.3% said no. When asked whether it is unfair to lower the entrance requirements for some students, regardless of the reason, 78.9% said yes. When asked whether it is right to give preferential treatment to minorities, even if it means denying admissions to other qualified applicants, 77.9% said no.

Where the questions allowed a "somewhat agree" or "strongly agree" answer, a majority of students were "strongly" in favor of fairness in admissions, as opposed to preferences, most of the time.

By a 9-to-1 margin, students reject the proposition that blacks and Hispanics should get preference in admissions over Asians, who are sometimes considered to be over-represented on campuses because they do so well academically.

More than two-thirds of the students (69.6%) oppose the proposition that some individuals and minorities, because they were denied access to higher education in the past, should receive preference over white men in admissions now. Of the 69.6% who said no, 38.8% said no strongly, while 27.4% said yes, 8.4% said yes strongly.

The proposition drew notably different responses depending on the ethnic group. Whites said no, 74.5% to 22.2%, and Asians said no, 62.5% to 37.5%. On the other hand, blacks said yes, 61.5% to 37.5%, and Hispanics said yes, 57.1% to 40%.

Allowing that the minority sample is small (18.6%), at least two-thirds of African-Americans agreed with the majority that fairness and standards should prevail over ethnic diversity in admissions. However, on the proposition that "schools should give minorities preference in the admissions process," blacks are divided, agreeing 51.9% to 46.7%.

Only 6.9% of all students said they would describe as racist an organization that believes that using preferences in admissions is not the best way to help minorities get a better education because it masks deeper problems in K-12 education.

By comparison, men and women are not that far apart on the atonement proposition: 72.4% of men and 67.4% of women reject giving minorities more opportunities than white men.

Students said it is all right to focus on the differences among people and offer courses on gay and lesbian, Latino, and African-American studies, as long as the differences are not emphasized too much. Overall, 56.9% said that if there were such emphasis, it would divide students, rather than unite them. However, 76.6% said their schools are not placing such an emphasis on differences. That supports the assertion of four out of five students that their colleges are fostering unity.

Differing Opinions

Public Colleges Compared with Private Colleges

There are slight differences in responses, and a few stand out, most notably how diverse each group finds its campus.

Of public college students, 87.9% said their campuses are ethnically diverse; among private college students, it is 70.4%.

Public college students said the atmosphere of political correctness is greater on their campuses. Private college students said their high schools prepare them better for college.

Men and Women

Men and women are close in their responses on most issues. However, there are some big differences.

Women are much more likely than men to say that colleges should offer more gay and lesbian, Latino, and African-American courses.

Among men, 50.1% said their education suffers from dumbing down; 43.2% said it does not. Among women, 36.0% said their education suffers; 55.3% said it does not.

Women are much more inclined than men to say that colleges are not focusing too much on differences between people, such as race and gender. Men are more likely (61.8%) than women (50.9%) to report that an atmosphere of political correctness restricts what people say and learn on campus.

When asked whether, because of past denials of educational access, some individuals and minorities should get more educational opportunities today than white men, 72.4% of the men said no, as did 67.7% of the women.

NARRATIVE ANALYSIS

1. What year did you graduate from high school?

1999	23.4%
1998	19.4
1997	13.7
1996	13.0
Other	30.4

There are two salient characteristics: freshman form the largest share of students who have graduated in the past four years and, more significantly, 30.4% of the sample comprises students who finished high school more than four years ago.

Those who are not registered to vote drops from 41.5% of the freshman class to 7.6% of the senior class. Membership in political parties is divided evenly in each class, but ideologically, seniors are less likely to be either conservative or liberal than when they entered college.

2. How well or poorly do you feel that your high school education prepared you for college?

Excellent 27.5%
Good 43.9
Fair 22.8
Poor 5.3

Private college students said they are better prepared than those at public colleges. White students said they are better prepared than any of the minorities surveyed. (Note that the sample sizes for African-Americans, Hispanics and Asians are small, and it is sometimes difficult to draw conclusions.) Less than 60% of the oldest students and lowest income students said their preparation was good or excellent.

3. What is your major?

Science/math 107 (11.9%)
Business/marketing 96 (10.7)
Education 96 (10.7)
English/communications 93 (10.3)
Engineering/electronics 62 (6.9)
Nursing/health 58 (6.5)
Psychology/sociology 58 (6.5)
Art/music 55 (6.1)
Child/family studies 38 (4.2)
Accounting/economics 36 (4.0)
Computers/info. systems 32 (3.6)
Political science/history 27 (3.0)
Criminal justice 20 (2.2)
Sports 10 (1.1)
Other 100 (11.1)
Undecided 10 (1.1)

4. What is your current GPA? (grade point average)

4.0 -3.5 351 (44.9%)
3.4 -3.0 108 (13.8)
2.9 -2.5 278 (35.5)
2.4- below 45 (5.7)

Almost half report an A- average, almost six in ten report a B or better average, and 93% report at least a B-. Only one in twenty report a C+ or below.

5. Overall, how would you rate the quality of the college education you have received so far - excellent, good, fair or poor?

Excellent 40.8%
Good 49.4
Fair 8.5
Poor 1.1

There are few significant distinctions. Most notably, of private college students, 57.4% said their college education is excellent and 36.8% good. The reverse is true among public college students: 53.2% said good and only 35.8% said excellent.

6. In general, how would you rate the amount of ethnic diversity in your college or university?

Very diverse 30.5%
Somewhat diverse 53.6
Not diverse 15.7

Overall, 84.1% said their campuses are ethnically diverse. Public school students (87.9%) report much more diversity than private schools (70.4%). Allowing that the sample is small, Asians said unanimously that their campuses are diverse, with 59.4% saying very diverse.

In contrast, 71.1% of African-Americans report ethnic diversity at their colleges, with only 19.2% saying very diverse. Hispanics and whites are similar in sharing the overall view. The oldest students and the highest income students each find diversity at a higher rate, 90% diversity.

23. Do you strongly agree, somewhat agree, somewhat disagree, or strongly disagree?

Schools should give minority students preference in the admissions process.

Strongly agree 6.2 %
Somewhat agree 15.1
Somewhat disagree 26.1
Strongly disagree 51.2

More than three-quarters of the students disagree. More than half of the students disagree strongly. The majority opinion that minority students should not get preference is consistent within age, income and educational levels.

Although substantial agreement pervades almost all categories, it is significantly different in regard to political affiliation and ideology. Of Republicans, 85.4% oppose preference, compared with Democrats, 67.5%; and independent/others, 74.2%. More than 80% of conservatives and moderates oppose preference, compared with 66.7% of liberals.

Whites (79.5%), Hispanics (71.4%), Asians (78.1%), and Others (78.1%) decisively oppose preferences, while African-Americans oppose by a slight majority (51.9%).

27. Do you strongly agree, somewhat agree, somewhat disagree or strongly disagree?

People of different races or ethnic backgrounds often hold differing opinions on various issues.

Strongly agree 52.1 %
Somewhat agree 35.3
Somewhat disagree 7.0
Strongly disagree 4.2

More than half strongly agree. Among whites, 86.5% agree, and the three minorities in the survey agree at a 94% average.

28. Do you strongly agree, somewhat agree, somewhat disagree or strongly disagree?

Fairness and academic standards are more important in admissions policies than ethnic diversity.

Strongly agree 39.6 %
Somewhat agree 36.2
Somewhat disagree 14.9
Strongly disagree 6.5

Three-quarters agree that fairness and academic standards are more important in admissions policies than ethnic diversity. More than 80% of freshmen and 18-year-olds also agree.

Students with family incomes above $25,000 agree more than those below $25,000. Conservatives, moderates, and liberals agree in percentages above the overall average. Republicans (81%) agree more than Democrats (72.4%) or independents/others (74.3%).

Among whites, 78.1% agree. African-Americans, Hispanics, Asians, and Others agree by percentages ranging from 65.7% to 68.8%. (Note: The minority students form only 18.6% of the sample).

29. Do you strongly agree, somewhat agree, somewhat disagree or strongly disagree?

It is right for a college or university to give preferential treatment to some minorities in the admissions process even if it means taking away opportunities for other qualified applicants.

Strongly agree 6.5 %
Somewhat agree 13.9
Somewhat disagree 24.9
Strongly disagree 53.0

More than three-quarters disagree. More than 80% of freshmen and sophomores and l8 and l9-year-olds said preferential treatment is not right. The percentages decline slightly with age and time in school.

More than 83% of conservatives and moderates said preferential treatment is not right, compared with 66.3% of liberals. Among Republicans, 86.2% said preferential treatment is wrong, as did 76.6% of independents/others, and 70.3% of Democrats.

Ethnic groups agreed it is not right to take away opportunities for other qualified applicants: whites, 79.1%; African-Americans, 67.3%; Hispanics, 71.4%; Asians, 84.1%; and Others, 71.7%.

35. How important is racial and ethnic diversity of the student body on your campus?

A. Very important 29.2%
B. Somewhat important 55.1
C. Not important 14.3

A substantial majority of 84.3% said it is important, with more than half describing ethnic diversity as somewhat important. There is no pattern among classes, ages or income groups.

By ideology, all students said it is important, with moderates (85.7%) and liberals (84.9%) more so than conservatives (80.8%). There is not much difference among the ethnic groups, all around the 84.3% average, with Asians (93.8%) somewhat higher.

36. Which is more important in admissions decisions?

A. Fairness in meeting academic standards 86.4%
B. Achieving ethnic diversity 11.4

There were no major shifts within class, age or income groups. More moderates (90.5%) than conservatives or liberals said fairness is important.

The percentage of each ethnic group that supports fairness in meeting academic standards are whites, 87.4%; African-Americans, 71.2%; Hispanics, 88.6%, Asians, 93.8%, and Other, 80.6%, again taking into account the small sample (18.6%) for the minorities.

37. Which is more important to a quality education?

Exposing students to a diversity of ideas 56.8%
Setting high academic standards 38.9
Achieving ethnic diversity 2.9

Overall, 95.7% said diversity of ideas and high standards are more important than achieving ethnic diversity, and diversity of ideas is the solid choice of the majority.

There is no pattern among classes, ages or income groups. The difference is between how students rate diversity of ideas and high standards.

Only Republicans and students between 23- and 30-years-old rate high standards above diversity of ideas, and by small margins. Conservatives are the only majority (50.5%) to say standards are more important. In contrast, 63% of liberals and 57.9% of moderates endorse diversity of ideas.

Students at specialized colleges are divided between standards and ideas, whereas students at liberal arts colleges prefer diversity of ideas (58.8%) over high standards (37%). Whites, 56.9%; African-Americans, 63.5%, and Hispanics, 65.7% and Others, 50.7%, favor diversity of ideas. Asians split, 46.9% each, for diversity of ideas and standards.

38. Asian-Americans do so well academically that they are considered an over-represented minority on some campuses. Some colleges, therefore, would rather have more black and Hispanic students than Asian-Americans. Do you think that colleges should give preference to certain minorities, or should colleges strive primarily for fair enrollment?

Fair enrollment 92.7%
Give preference 5.8

By almost 16 to 1, students reject the proposition that blacks and Hispanics should get preference in admissions. Among ethnic groups, 94.1% of whites prefer fairness, compared to 86.5% of African-Americans; 88.6% of Hispanics, 96.9% of Asians, and 83.6% of Others.

39. If an organization believes that using preferences in college admissions is not the best way to help blacks and other minorities get a better education because it masks deeper problems in grades K-12, how would you describe that organization's attitude?

Concerned 65.6%
Not concerned 21.3
Racist 6.9

Almost two-thirds said the organization is concerned. There is no pattern among class, age and income categories, each reflecting the overall average.

Private college students are a little more likely to see concern than public college students. A majority in all the ethnic groups describes the organization as concerned, not racist: whites by 67.7%-6.2%; African-Americans 50%-13.5%; Hispanics, 60%-8.6%, Asians, 62.5%-9.4%, and Others 59.7%-9.0%.

40. Do you agree or disagree that courses that put too much emphasis on subjects such as race, class and gender divide students rather than unite them?

Strongly agree 26.1%
Somewhat agree 30.8
Somewhat disagree 24.7
Strongly disagree 18.7

With the exception of college seniors, all classes agree, rather decisively, that courses putting too much emphasis on race, class and gender divide students. Seniors disagree, 55%-42%. Twenty-one-year-olds are the only age group to disagree.

Conservatives and moderates agree, 3 to 2, compared to a majority of liberals, who said that too much emphasis does not divide students. Republicans and Democrats are wide apart. Republicans said such courses divide students, 67%-32.8%, while Democrats said they do not divide, 53.1%-45.3%. Moderates said they divide 60.4%-37.5%. independent/others also said too much emphasis is divisive, 55.3%-43%.

41. Because some individuals and minorities were denied access to higher education in the past, they should have more opportunities today than white men to attend college?

Strongly agree 8.4 %
Somewhat agree 19.0
Somewhat disagree 30.8
Strongly disagree 38.8

More than two-thirds of the students (69.6%) disagreed. There is no pattern among the classes and age groups, each generally reflecting the overall average.

Students with family incomes above $50,000 disagree a little more than those below $50,000. By ideologies, all students disagree, yet there are differences. Conservatives disagree by 4 to 1, liberals by 2 to 1.

Republicans (79%) disagree more than Democrats (60.9%), with independents/others (68.9%) in between.

While whites disagree, 74.5%-22.2%, both African-Americans and Hispanics agree, Blacks agree, 61.5%-36.6%, and Hispanics, 57.1%-40%. Asians disagree, 62.5%-37.5%.

42. Do you agree or disagree: Lowering the entrance requirements for some students, regardless of the reason, is unfair to the entire student body?

Strongly agree 53.2 %
Somewhat agree 25.7
Somewhat disagree 13.7
Strongly disagree 6.3

Four in five students said lowering entrance requirements is unfair. There is a substantial difference in intensity: 53.2% agree strongly; only 6.3% disagree strongly.

All groups oppose lowering entrance requirements decisively, differing only in the amount of disagreement. Republicans agree more than Democrats, while moderates and conservatives agree more than liberals.

All of the ethnic groups agree decisively as well about not lowering entrance requirements. Whites, Hispanics, Asians, and Others agree, 4 to 1, and African-Americans agree 3 to 2.

43. Do you agree or disagree: Because there are few common values that bind all Americans, colleges should focus more on our differences and offer, for example, courses on gay and lesbian, Latino, and African-American studies.

Strongly agree 22.2 %
Somewhat agree 34.7
Somewhat disagree 20.7
Strongly disagree 19.6

A decisive majority said colleges should offer courses on gay and lesbian, Latino, and African-American studies. A fifth of the students on each side of the proposition strongly agree or strongly disagree.

Agreement increases with each year, from freshmen (55.3%) to seniors (64.1%). The oldest students are among the few groups to oppose focusing more on minority studies.

Liberals (74.4%) and moderates (57%) support such courses. Conservatives (61.6%) oppose them. Democrats favor such courses, 70.8%-28.4%. Republicans oppose them, 59.1%-38.8%. Women endorse such focus, 60.2%-35.1%. Men agree, but by a thin margin.

Liberal arts students are more in favor than specialized students, and public college students favor more than private college students. Each minority is solidly in favor of a focus on differences; African-Americans and Hispanics by more than 77%; Asian-Americans by 68.7%. Whites agree, but by a narrow 53.3% to 43.8%.

44. Do you agree or disagree: Your school puts too much emphasis on students' race, class and gender?

Strongly agree 8.8 %
Somewhat agree 13.6
Somewhat disagree 33.4
Strongly disagree 43.2

Three-quarters said their colleges do not put too much emphasis on students' race, class and gender. Large percentages in all categories say that there is not too much emphasis.

There are no significant differences between Republicans and Democrats, conservatives and liberals, or among the ages, classes and levels of income, or among the ethnic groups.

56. On every U.S. coin, there is the motto, 'E Pluribus Unum,' which is Latin for 'from the many, one.' Does your college:

A. Help foster this unity?
B. Help to divide students by having them concentrate on their differences?

Help to foster unity
80.4%Help to divide students by 14.7

Few groups vary from the 5-to-1 overall report of unity.

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APPENDIX VII:

Materials on the faculty survey on the use of preferences based on race, sex, and ethnicity at the Connecticut State University by the University of Connecticut's Center for Survey Research and Analysis, commissioned by the Connecticut Association of Scholars, March 28 to April 17, 2000.

NAS Press Release. 18 April 2000. "NAS Endorses Connecticut Faculty Poll"
NAS Press Release. 5 May 2000. "NAS Scores Uconn Attack on Free Inquiry"
Bergman, Jay. 14 July 2000. "Arrest That Poll," The Washington Times

http://www.washtimes.com/op-ed/ed-column-200071404631.htm

July 14, 2000

Arrest that poll

Jay Bergman

This spring the University of Connecticut's Center for Survey Research and Analysis (CSRA) conducted a poll of 1,341 Connecticut State University professors on the use of preferences based on race, gender and ethnicity. The poll was commissioned by the Connecticut Association of Scholars and co-sponsored by the National Association of Scholars, the American Civil Rights Institute and the Center for Equal Opportunity.

Its questions were clear: "Do you feel that [name of institution] should or should not grant preference to one applicant over another in faculty employment decisions on the basis of race, sex, or ethnicity?" A second question, phrased the same way, concerned student admissions.

The results of the poll, which were widely reported in newspapers and on television around the state, revealed overwhelming opposition to these preferences. In faculty hiring, professors in the Connecticut State University system rejected preferences by 61 percent to 18 percent (with the remainder undecided or not responding), University of Connecticut faculty did so by 52 percent to 29 percent, and community college faculty by 75 percent to 15 percent. In student admissions, CSU faculty rejected preferences by 58 percent to 23 percent, University of Connecticut faculty by 47 percent to 35 percent, and community college faculty by 73 percent to 9 percent.

Even before the poll was completed, several professors at the University of Connecticut, fearful of the results, angrily denounced it, claiming its methodology was flawed — that the questions were misleading and ambiguous and deliberately designed to advance the conservative agenda of the organizations that commissioned the poll and co-sponsored it. One protesting professor, Kenneth Neubeck of the Sociology Department, said the questions were "loaded." Another, Murphy Sowell of the School of Business Administration, declared that "as a social scientist and a professional, I don't believe this study should be acceptable for academic standards and research."

Yet another, Diana Rios of the Department of Communication Sciences, condemned the poll for "forcing a choice and not allowing for an alternative response." On the day the results were announced, approximately 30 University of Connecticut faculty assembled outside the office of the president of the university, Philip Austin, and demanded that he join them in repudiating the poll. In the press release they issued, they complained that the poll "left many faculty feeling they were duped." Several professors affiliated with the university's Puerto Rican/Latino Cultural Center even demanded that CSRA itself be investigated.

That these professors disliked the results of the poll, rather than the way in which the poll was conducted, is obvious. Can anyone seriously believe they would have been so agitated if the poll had revealed support for preferences? CSRA has done polls for liberal organizations in the past, such as the Media Studies Center and the First Amendment Center. One searches in vain for any protests against those polls by the professors so offended by this most recent one. What these advocates of preferences evidently believe is that faculty opinion on preferences should not be sampled by a duly constituted agency of the university. Their real objective, as their actions reveal, is to silence those who disagree with them.

When the poll results were announced, Mr. Austin issued a statement reaffirming the right of CSRA to conduct polls for whomever it wished. But he also repeated an earlier statement of his that the university's commitment to inclusion and fairness "will not be tailored to fit this or any year's political fashion," thus implying that the faculty at his university who oppose racial preferences are somehow opposed as well to inclusion and fairness — which is really just a small step from saying they are bigots. Indeed, the interim chancellor of the university, Fred Maryanski, effectively nullified the president's statement supporting CSRA by agreeing to the professors' demand and creating a task force to examine how CSRA conducts research for external organizations.

The mere existence of the task force is a threat to academic freedom. Regardless of its ultimate recommendations, it cannot help but exert a chilling effect on what professors and students believe can be freely and openly discussed at the University of Connecticut. What is worse, it sends a message to polling organizations everywhere in America, not just those affiliated with universities, that no matter how sound and unbiased their polling methods may be, they can expect to be investigated, their integrity questioned and their professionalism impugned, if persons displeased with the results of their polls decide to vent their spleens publicly.

Polling is an integral aspect of American politics. It is also helpful in the formulation of public policy. For this reason, everyone who values democracy and free speech in America should hope that the University of Connecticut comes to its senses and disbands this task force immediately. For too long, university administrators have capitulated to the demands of a small minority of faculty so infatuated with their own imagined moral virtue and victimization that they seek a market place of ideas in academia in which only their own ideas are presented. It is time that such petulance end.

Jay Bergman is professor of history at Central Connecticut State University and president of the Connecticut Association of Scholars.

APPENDIX VIII:

Composite table summarizing the 1985-89 CIRP longitudinal student databases used in Astin 1993c, Chang 1996, Chang 1999, and Gurin 1998.

Composite Table of Four Studies Based on the HERI-CIRP Database
(Four-year 1985-89 undergraduate longitudinal study)

			Control Variables						
				Environmental Variables					
	4-year institutions	Students	Student Input Variables	Environmental "Bridge" Variables		Intermediate Outcome Variables = Student Involvement Variables		Final Outcome Variables	
Astin 1993	309	24,847	131	135		57		82	
Chang 1996	371(392)	11,600+(18,888)	26	24		13		7**	
Chang 1999 (Step 1)	371	11,688	16	13	1	12		2	
Chang 1999 (Step 2)	371	11,688	16	13		12	2	4	
Gurin 1998								Learning	Democracy
4-year study	184	9,316	6	6		5		15	8
9-year study	184	9,316	6	6		5		13	21
9-year "living"	184	9,316	6	6		5		2	5

APPENDIX PART II

APPENDIX IX: Lederman, Douglas. 1997. Backers of affirmative action seek research to bolster cause: At meeting at Harvard, sympathetic lawyers tell scholars that their work will not sway many judges. Chronicle of Higher Education (May 23, 1997). http://chronicle.com/che-data/articles.dir/art-43.dir/issue-37.dir/37a02801.htm (pay subscription site)

APPENDIX X: Traub, James. (2 May 1999) The class of Prop. 209. New York Times Magazine.